

**In The Matter Of:**  
*FREE SPEECH COALITION, INC. et v*  
*THE HONORABLE ERIC H. HOLDER*

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*March 14, 2013*

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1 Alper  
2 A. I am in the process of creating a new  
3 website.  
4 Q. Do you use some kind of a program so  
5 that you control and manage the content?  
6 A. I have not been able to do that. I  
7 had somebody -- it's complicated. I had  
8 somebody who designed my site. It is too much  
9 trouble for me, so I haven't done anything as  
10 far as changing images for about a year, which  
11 is why I am now creating a new website where I  
12 can change images around at will, but I am  
13 learning how to do that.  
14 Q. Why do you have a website?  
15 A. For people to be able to see the kind  
16 of work I do for reference, for work purposes.  
17 Q. So you do it for commercial purposes?  
18 A. Yes.  
19 Q. Do you know of other websites where  
20 you have content or pages or something like  
21 that?  
22 A. I am a finalist in a Hasselblad  
23 Masters Competition, so I am on their website.  
24 I have a stock agency that represents some of my  
25 work, so I am on their website.

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1 Alper  
2 I don't know where else my work might  
3 be showing up.  
4 Q. Can you mark this as Alper 2.  
5 (Alper Exhibit 2 marked for  
6 identification)  
7 Q. Do you recognize this? Could you  
8 describe what that is.  
9 A. I am not sure where this is from.  
10 Q. The URL is at the bottom of the first  
11 page.  
12 A. Oh, Saatchi. I forgot about them.  
13 Yes, I posted work on their site a year or two  
14 years ago. It's completely forgotten.  
15 Q. How did you come to post work on this  
16 website?  
17 A. Either they solicited or I knew of  
18 them, and they are more of a fine arts source.  
19 Q. What did you see as the purpose of  
20 posting your work on this website?  
21 A. Exposure and possible sales.  
22 Q. Did you choose the images that would  
23 be shown?  
24 A. Yes.  
25 Q. So did you submit image files to them

Page 11

1 Alper  
2 and then they posted it on the site?  
3 A. Yes.  
4 Q. Do you think that the images that you  
5 see there are representative of your current  
6 work?  
7 MS. BAUMGARDNER: Objection.  
8 A. My work is varied. So it's  
9 representative of some area and aspect of my  
10 work.  
11 Q. How would you characterize your work  
12 currently?  
13 MS. BAUMGARDNER: Objection. If you  
14 can, Barbara.  
15 A. It is varied.  
16 Q. Could you give examples of the kind of  
17 work that you are doing now?  
18 MS. BAUMGARDNER: Objection.  
19 A. I do editorial work on assignment, and  
20 I do personal work.  
21 Q. What kinds of subject matter appear in  
22 your work?  
23 A. People, food, clubs, fashion, flowers,  
24 gardens, a whole range of stuff really.  
25 Q. Have you made photographs that depict

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1 Alper  
2 sexually explicit conduct. When I say "sexually  
3 explicit conduct," I mean work as defined in the  
4 2257 and 2257A statutes.  
5 A. Yes.  
6 Q. Are you familiar with the definition  
7 of "sexually explicit conduct" in those  
8 statutes?  
9 A. I believe so.  
10 Q. Could you describe the work that  
11 you've produced that falls within that category?  
12 A. I have photographed at clubs. I've  
13 photographed at S & M clubs, and I have  
14 photographed at clubs around the world, and I  
15 have photographed privately.  
16 Q. What time period did you take these  
17 photographs?  
18 MS. BAUMGARDNER: Objection. Do you  
19 want to clarify which ones?  
20 Q. During what time period did you take  
21 your photographs of sexually explicit conduct?  
22 A. Well, that's --  
23 MS. BAUMGARDNER: I don't think that  
24 clarifies it.  
25 Q. Is there more than one time period

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1 Alper  
2 where you took such photographs?  
3 A. Yes.  
4 Q. What was the earliest time period when  
5 you were taking photographs of sexually explicit  
6 conduct?  
7 A. Actually, the earliest would be 1978.  
8 Q. What were those photographs?  
9 A. Couples.  
10 Q. In what sense?  
11 A. A couple making love.  
12 Q. Where was the setting?  
13 A. In their home.  
14 Q. Are you talking about more than one  
15 photograph or couple or --  
16 A. That was one instance.  
17 Q. That was one instance?  
18 A. Yes.  
19 Q. When was the next time?  
20 A. There might have been some others  
21 along the way, but then I photographed at clubs  
22 starting in 1981.  
23 Q. How did you come to photograph at  
24 clubs?  
25 A. A photographer who was having a party

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1 Alper  
2 at one of the S & M clubs invited me and said  
3 bring my camera.  
4 Q. At the time what else were you doing  
5 in photography?  
6 A. I was working for American Lawyer  
7 Magazine. I was freelancing, and I started a  
8 series on Rockaway Beach.  
9 Q. When you went to these clubs, the  
10 first, when you went to the first club and were  
11 asked to bring your camera, was that -- did that  
12 qualify as an assignment or --  
13 A. It was a personal project.  
14 Q. Were you paid for this?  
15 A. No.  
16 Q. Why did your friend or acquaintance  
17 ask you to bring your camera?  
18 MS. BAUMGARDNER: Objection.  
19 Q. If you know.  
20 A. They thought I would be interested and  
21 want to take pictures.  
22 Q. When you went to this club, what was  
23 the setting?  
24 A. It was an S & M club called the  
25 Hellfire Club.

Page 15

1 Alper  
2 Q. What was it? What time of day was the  
3 event?  
4 A. It was at night.  
5 Q. I'm not very familiar with clubs, so  
6 what was it like? Was it very crowded?  
7 A. Yes.  
8 Q. Noisy?  
9 A. I don't remember.  
10 Q. Was it dark?  
11 A. Yes.  
12 Q. Were people drinking?  
13 A. Yes.  
14 Q. Were you drinking?  
15 A. No.  
16 Q. How did you decide what photographs to  
17 take?  
18 A. I photograph what interests me.  
19 Q. Were people using drugs at the club?  
20 MS. BAUMGARDNER: Objection.  
21 A. I have no idea.  
22 Q. That you know of?  
23 A. I have no idea.  
24 Q. Were you using drugs when you were  
25 taking photographs at the club?

Page 16

1 Alper  
2 MS. BAUMGARDNER: Objection.  
3 A. No.  
4 Q. Did you ever think when you were  
5 taking these photographs that -- first of all,  
6 were all the photographs that you took at this  
7 club photographs of sexually explicit conduct?  
8 A. Yes.  
9 Q. In what sense?  
10 MS. BAUMGARDNER: Objection.  
11 A. I don't understand.  
12 Q. What was involved that makes you  
13 believe that the photographs you were taking  
14 were of sexually explicit conduct?  
15 A. It was an S & M club.  
16 Q. So all of the photographs that you  
17 took involved S & M conduct?  
18 A. Yes.  
19 Q. Did you ever wonder about the fact  
20 that if you were to photograph a minor engaged  
21 in that conduct -- let me rephrase. Did it ever  
22 occur to you to wonder whether any of the  
23 individuals in the club were minors?  
24 A. It is an adult-only club.  
25 Q. What does that mean?

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1 Alper  
2 A. It means people had to be over 21 to  
3 get in.  
4 Q. How is that enforced?  
5 A. There was a sign posted at the  
6 entrance, and IDs were checked.  
7 Q. Who was checking IDs?  
8 MS. BAUMGARDNER: Objection.  
9 If you can remember.  
10 A. Whoever took people's money to enter  
11 the club.  
12 Q. Have you ever heard of underaged  
13 individuals getting into clubs that had age  
14 restrictions?  
15 A. I have no idea.  
16 Q. You never looked at the IDs of the  
17 people whose photographs you were taking?  
18 A. There would be no reason to.  
19 Q. So you were operating on an assumption  
20 that the people you were photographing were 18  
21 or over or 21 or over?  
22 MS. BAUMGARDNER: Objection. I don't  
23 think it was an assumption. But go ahead. You  
24 can answer Ms. Wyer's question.  
25 A. I knew that people were older.

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1 Alper  
2 Q. This was based on the fact, your  
3 understanding that there was a sign posted?  
4 MS. BAUMGARDNER: Objection.  
5 A. And by appearance. People were older.  
6 There were no young people there.  
7 Q. What do you mean by "young"?  
8 MS. BAUMGARDNER: Objection.  
9 A. Teenage.  
10 Q. So that was the first time you went to  
11 a club, in 1986?  
12 A. No, I didn't say '86.  
13 Q. What did you say?  
14 A. 1981.  
15 Q. 1981. How many additional times did  
16 you go to clubs like that to take photographs?  
17 A. Several.  
18 Q. Do you have a more specific number?  
19 A. No.  
20 Q. Less than five or more than five?  
21 A. I don't remember.  
22 Q. Less than ten?  
23 A. I don't remember, honestly.  
24 Q. How frequently would you go to clubs  
25 to take photographs?

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1 Alper  
2 A. If there was a party that I knew of  
3 and I was invited to photograph at.  
4 Q. Was the total number of times when you  
5 went to clubs to take photographs more than a  
6 hundred?  
7 MS. BAUMGARDNER: Objection.  
8 She's testified she doesn't remember.  
9 A. Right. I don't remember.  
10 Q. You don't remember if it was more than  
11 a hundred or less than ten?  
12 A. I don't think it was more than a  
13 hundred.  
14 Q. Do you think it was more than 50?  
15 A. I don't know.  
16 Q. More than 90?  
17 MS. BAUMGARDNER: Objection. She's  
18 answered the question that she doesn't remember.  
19 It's less than a hundred.  
20 THE WITNESS: Right.  
21 MS. BAUMGARDNER: We have provided  
22 photos of some of the clubs she photographed.  
23 Q. When was the last time that you took  
24 photographs at a club of S & M?  
25 A. 1995.

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1 Alper  
2 Q. What was that occasion?  
3 A. There was a party in England in London  
4 that I was invited to photograph.  
5 Q. So between 1981 and 1995 was the  
6 period when were you taking photographs in clubs  
7 of S & M?  
8 A. Yes.  
9 Q. In 1995 what else was happening in  
10 your career?  
11 A. I was photographing for the New York  
12 Times and working on other projects.  
13 Q. Is there a trajectory of your career  
14 that you can describe starting in 1980.  
15 MS. BAUMGARDNER: Objection. I am not  
16 sure -- perhaps if you could clarify what you  
17 mean by "trajectory."  
18 Q. I am not sure how it worked because of  
19 your working on assignments. Did you have one  
20 main employer and then it changed over time, or  
21 how did it develop or how did you go from one  
22 thing to the next, starting in 1980?  
23 A. Things evolve and I have various  
24 clients along the way. I have the New York  
25 Times I worked for for ten years, and I would

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1 Alper  
2 exhibition of genitals?  
3 A. I am not sure what "lascivious  
4 exhibition" means.  
5 Q. So you have not attempted to determine  
6 whether -- have you ever taken a photograph  
7 where you wondered if it qualified as lascivious  
8 exhibition of the genitals?  
9 MS. BAUMGARDNER: Objection. I think  
10 it's fair she's asked you what lascivious  
11 exhibition of the genitals means so she can  
12 answer your question. If you would provide her  
13 the definition, she could answer.  
14 Q. Let me rephrase. You say other than  
15 the photographs of you and your husband you have  
16 never taken photographs of sexually conduct  
17 since 1995, correct?  
18 A. Correct.  
19 Q. Is that correct or not?  
20 A. That's correct.  
21 MS. BAUMGARDNER: Can I bring Cara  
22 back in.  
23 THE WITNESS: Yes.  
24 MS. BAUMGARDNER: Kathy, is that all  
25 right with you? We will ask her to leave if the

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1 Alper  
2 subject matter comes up again. I got the  
3 impression that you were moving on to a new area  
4 of questioning.  
5 MS. WYER: OK.  
6 (Ms. Gagliano present)  
7 Q. Let's turn to 2257. Could you  
8 describe what requirements of 2257 cause you  
9 concern.  
10 A. This is a couple of things. One is  
11 the requirement of showing people's IDs and  
12 revealing their identity; two, the recordkeeping  
13 involved. Those are a couple of things.  
14 Q. When you say showing peoples IDs and  
15 revealing their identity is a concern, are you  
16 concerned about people revealing their  
17 identities to you?  
18 A. Not to me.  
19 Q. Are you concerned about looking at  
20 people's IDs?  
21 A. No.  
22 Q. So what is concerning about looking --  
23 A. Their information could be made  
24 public.  
25 Q. How do you think that would happen?

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1 Alper  
2 A. I don't remember the specifics of the  
3 law, but I believe that if -- what? If it were  
4 shared, if somebody wanted to examine my  
5 records, that's how.  
6 Q. In your understanding, someone  
7 examining your records could lead to your  
8 records becoming public?  
9 A. Yes. That's one.  
10 Isn't there another aspect of the law  
11 where the -- I am not good at remembering  
12 specific details of the law in general.  
13 Q. You are not concerned with yourself  
14 checking IDs, correct?  
15 A. I didn't say that.  
16 Q. You are concerned? Are you concerned  
17 about checking IDs?  
18 A. I would not photograph anyone  
19 underage. That is of no interest to me. So I  
20 know that people are old enough and over the age  
21 of 21 or 18 -- over the age of 21 before I would  
22 be photographing them.  
23 Q. So the requirement that you check IDs,  
24 is that a concern to you, just the checking of  
25 the IDs?

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1 Alper  
2 MS. BAUMGARDNER: Can you clarify what  
3 you mean by concern, Kathy. I don't mean to be  
4 playing games here. That might be kind much a  
5 loose term. If you could clarify that a bit, it  
6 might make it easier for her to respond.  
7 A. I know the people I photograph, so I  
8 don't need to check ID.  
9 Q. So you view checking IDs as  
10 unnecessary because you never -- when you say  
11 you know the people you photograph, what  
12 photographs are you describing?  
13 A. The personal ones that I take.  
14 Q. I think now we are going back to the  
15 subject.  
16 MS. BAUMGARDNER: OK. This may elicit  
17 more testimony that will be subject to the  
18 protective order, so I am going to ask the law  
19 student in the room to leave the room, please.  
20 (Ms. Gagliano not present)  
21 A. I know how old I am, and I know how  
22 old my husband is. And I have our IDs.  
23 Q. So these are the only photographs that  
24 you are describing?  
25 A. That I am photographing currently.

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1 Alper  
2 A. Yes.  
3 Q. Is that always the case, that they are  
4 for sale?  
5 A. If they are at a museum, they are not  
6 for sale.  
7 Q. But at a gallery they would always be  
8 for sale?  
9 A. Yes.  
10 Q. When you responded to the defendant's  
11 request for production and provided 10 examples  
12 of your work, do you remember the photographs  
13 that you gave us as examples?  
14 A. Not off the top of my head.  
15 MS. BAUMGARDNER: Do you have the list  
16 available. That would be helpful.  
17 Q. Would just looking at the list from  
18 your discovery responses refresh your memory?  
19 A. Of what?  
20 Q. Of the photographs that you gave us as  
21 examples.  
22 A. Yes.  
23 Q. The list, if we gave you the list.  
24 A. I'm not sure what you are asking to  
25 elicit.

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1 Alper  
2 Q. There is one copy. I will show it to  
3 you to refresh your memory.  
4 MS. BAUMGARDNER: That was response to  
5 question No. 5 of the defendant's first set of  
6 interrogatories propounded to plaintiffs?  
7 MS. WYER: Yes.  
8 A. So what is your question?  
9 Q. Does looking at that list of titles  
10 refresh your memory about what photographs you  
11 provided to the defendant as examples of your  
12 work?  
13 A. Yes.  
14 Q. How did you select the photographs in  
15 that list to provide?  
16 A. I don't --  
17 MS. BAUMGARDNER: Would you let her  
18 read the statute. That might help her refresh  
19 her memory of how she --  
20 MR. BLADUELL: I don't think she's  
21 established that she doesn't remember, and she  
22 cannot answer the question without the list.  
23 MS. BAUMGARDNER: Kathy asked how she  
24 selected them. And I think if she reads the  
25 question of what she was supposed to produce,

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1 Alper  
2 that might refresh her recollection as to how  
3 she made those selections.  
4 A. Because they are a representative  
5 sample of my work.  
6 Q. Would any photograph from the clubs  
7 that you took of S & M conduct before 1995 be  
8 representative?  
9 A. Yes.  
10 Q. So were these a random selection?  
11 A. Yes. Some of them I had already  
12 scanned.  
13 Q. How many of these photographs from  
14 that set of pre-1995 S & M conduct have been  
15 sold or collected?  
16 A. The New York Public Library purchased  
17 20 of them. The Bibliothèque Nationale in Paris  
18 purchased -- I can't remember exactly how many.  
19 They purchased 10 or 20. I don't remember  
20 exactly. So those are two examples.  
21 Q. Any other sales that you can remember?  
22 A. Yes. My work has been published in  
23 a -- is it a Danish, Norwegian magazine called  
24 Cupido.  
25 I don't remember if I was paid --

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1 Alper  
2 yeah, I have work in a book called Sex in New  
3 York City, and I think I was probably paid a fee  
4 for use of those pictures for the book.  
5 Q. Do you recall what year that book was  
6 published?  
7 A. Since 2000 -- no, I can't remember.  
8 Q. Was it after 1995?  
9 A. I'm not sure.  
10 Q. But the book would have a copyright  
11 date that would indicate that?  
12 A. Yes.  
13 Q. Going back to the 2257 requirements,  
14 we've talked about the ID requirement. When I  
15 ask you what requirements cause you concern,  
16 what I mean is which ones do you feel impact you  
17 or which ones are you objecting to.  
18 Are you objecting to the requirement  
19 of checking IDs?  
20 MS. BAUMGARDNER: Objection.  
21 A. Of checking ID? No.  
22 Q. So I will try to explain what I mean  
23 by "of concern" further. What I am asking is  
24 which requirements do you feel burden you, which  
25 ones are the ones that are the reason that you



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1 Alper  
2 the grounds that I think it's unfair --  
3 MS. WYER: I understand all of that.  
4 MS. BAUMGARDNER: -- that you are  
5 asking these questions without allowing her to  
6 review the particular regulations in the law.  
7 MS. WYER: We've noted that objection.  
8 Q. You mentioned here that one of your  
9 concerns is that you will not be able to find  
10 the IDs of individuals that appear in your work  
11 before 1995, and your concern there -- did I  
12 understand correctly that your concern is that  
13 you cannot publish, in your understanding you  
14 cannot publish such images from your pre-1995  
15 period together with any image that you might  
16 produce after the requirements have gone into  
17 effect?  
18 A. Yes.  
19 Q. But nothing would prevent you in your  
20 understanding from publishing your pre-1995 work  
21 separately, is that correct?  
22 MS. BAUMGARDNER: Objection.  
23 If you know.  
24 A. I don't think it would affect, but  
25 that's not what I want to do.

Page 42

1 Alper  
2 Q. So could you explain what your plan is  
3 for this compilation that you have indicated you  
4 are interested in producing.  
5 A. I would like to produce a book of work  
6 that I have taken prior to 1995 and include work  
7 that I've taken and/or will take since 1995 and  
8 put it together as representative of a body of  
9 work that I've done in my lifetime.  
10 Q. Since 1995 so far the only --  
11 MS. BAUMGARDNER: This may also  
12 implicate protected information protected by the  
13 protective order. So I am going to ask Cara to  
14 leave.  
15 (Ms. Galiano not present)  
16 Q. Since 1995 the only images that you  
17 have produced that qualify as depictions of sex  
18 reply explicit conduct are the images of you and  
19 your husband, correct?  
20 A. Yes. There are other situations that  
21 I have opportunity to photograph, but I can't  
22 because I can't ask for IDs.  
23 Q. What do you mean you can't ask for  
24 IDs?  
25 A. There are situations where -- how do I

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1 Alper  
2 explain this? Fire Island, where there are  
3 people openly having sex, there are men openly  
4 having sex that I could photograph, but it is in  
5 a totally anonymous situation, so I can't do it.  
6 Q. Are you saying that you would like to  
7 take photographs of these people without their  
8 knowledge?  
9 A. I can't do that.  
10 Q. I don't understand.  
11 A. I might be able to approach them  
12 afterwards, but nobody is willing to give an ID  
13 when people are having anonymous sex.  
14 Q. You mentioned Fire Island. What does  
15 that mean?  
16 A. There are areas in Fire Island --  
17 Q. Where is Fire Island? I am not  
18 familiar.  
19 A. It is on Long Island.  
20 Q. Why is that a location in particular  
21 that you mentioned?  
22 A. Because it is a location that's known.  
23 Q. So going back to the photos of you and  
24 your husband, how many photographs exist from  
25 that?

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1 Alper  
2 MS. BAUMGARDNER: Objection.  
3 A. I don't know.  
4 Q. These are photographs, not video, is  
5 that correct?  
6 A. Yes. That's correct.  
7 Q. You said that you've taken these such  
8 photographs on approximately five occasions?  
9 A. No.  
10 MS. BAUMGARDNER: Objection.  
11 A. That is not what I said.  
12 Q. OK. Please repeat what you said. I  
13 don't remember.  
14 A. I said I had photographed over the  
15 last five years.  
16 Q. And how many occasions?  
17 A. I don't remember.  
18 Q. So what has happened to these  
19 photographs?  
20 A. One, I have them; two, they were  
21 published in Cupido, in the magazine that is  
22 published in Norway.  
23 Q. Do you know what year, what issue of  
24 the magazine?  
25 A. I don't know specific issues, no.

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1 Alper  
2 Q. Would that be the most recent of your  
3 sales, to Cupido?  
4 A. Yes.  
5 Q. Did you create records under 2257 for  
6 these images?  
7 MS. BAUMGARDNER: Objection.  
8 A. No. I could at any time. It is my  
9 husband and me, and we're way overage. We could  
10 almost fall into the granny group.  
11 Q. Just for the record, how old are you?  
12 A. 63.  
13 MS. BAUMGARDNER: You are under oath.  
14 THE WITNESS: OK. I should have said  
15 50.  
16 Q. Is that the only sale of your  
17 photographs of you and your husband that has  
18 happened?  
19 A. Yes.  
20 Q. Have these photographs been exhibited?  
21 A. No.  
22 Q. Have these photographs been posted  
23 online?  
24 A. No.  
25 Q. Are these photographs that you want to

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1 Alper  
2 publish in the compilation that you have  
3 mentioned?  
4 A. Conceivably.  
5 Q. Have you contacted any publisher about  
6 a specific project that would involve a  
7 compilation such as you have described?  
8 A. Not yet.  
9 Q. So going back, just to summarize  
10 regarding the 2257 requirements, you've  
11 mentioned your understanding of the requirements  
12 that would apply to the compilation that you  
13 have described and the IDs of individuals in  
14 your pre-1995 work, correct?  
15 A. Yes.  
16 Q. And you have described a concern with  
17 the inspections, correct?  
18 A. Yes.  
19 Q. And you have described a concern with  
20 ID, including the names and IDs of individuals  
21 with the exhibited work?  
22 A. Yes.  
23 MS. BAUMGARDNER: Objection.  
24 Q. In your understanding of these  
25 requirements, are there any other aspects of

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1 Alper  
2 them that you feel impose a burden on you?  
3 A. I think I already mentioned  
4 recordkeeping.  
5 Q. Anything else?  
6 A. I would have to see a copy of the law  
7 to refresh my memory.  
8 MS. BAUMGARDNER: Just to be complete,  
9 objection. I think that isn't a complete list  
10 of her testimony, but the transcript will speak  
11 for itself. I think she identified other areas  
12 as well.  
13 Barbara, do you need a break?  
14 THE WITNESS: What time is it?  
15 MR. BLADUELL: It is 1:50.  
16 THE WITNESS: I can wait a little bit  
17 longer. Thank you.  
18 Q. Has anyone ever contacted you from the  
19 government saying that they wanted to conduct an  
20 inspection of your records under 2257?  
21 A. No.  
22 Q. Why haven't you made any other  
23 photographs, any other depictions of sexually  
24 explicit conduct since 1995?  
25 MS. BAUMGARDNER: That has not been

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1 Alper  
2 her testimony.  
3 Q. Other than the photographs of you and  
4 your husband, why have you not made any other  
5 photographs of sexually explicit conduct since  
6 1995?  
7 A. Partly because the restrictions of the  
8 ID and lack of anonymity with the 2257 ruling.  
9 Q. How did you become aware of those  
10 requirements?  
11 A. Through people I know.  
12 Q. When did you become aware of them?  
13 A. I don't remember exactly. In  
14 addition, I have also had other projects I have  
15 been working on. As I indicated before, I have  
16 different projects in my work.  
17 Q. Why did you stop taking photographs at  
18 S & M clubs?  
19 A. Because they were closed.  
20 Q. Why did they close?  
21 MS. BAUMGARDNER: Objection.  
22 Q. Was there some --  
23 A. There was AIDS, and I think that might  
24 help define reasons why the clubs closed.  
25 Q. So the fact that you stopped taking



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1 Alper  
2 MS. BAUMGARDNER: Yes. I object. I  
3 don't want the --  
4 MS. WYER: Are you objecting to her  
5 answer?  
6 MS. BAUMGARDNER: Yes, I am. I don't  
7 want her to guess. I don't think you want her  
8 to guess. Can you give an estimate?  
9 Q. Can you say with any certainty that  
10 you have ever been to Fire Island more than five  
11 times in a year?  
12 A. Probably not.  
13 Q. Meaning you can't say with any  
14 certainty or you probably have not been to Fire  
15 Island?  
16 A. I probably have not been more than --  
17 oh, so when I go out, I might go for a weekend  
18 or I might go for a week. So that's where it  
19 gets -- the question is too broad. I can't say  
20 how many times I've been because it doesn't  
21 mean -- it could be days or it could be a week.  
22 Q. On any of these occasions when you  
23 have gone to Fire Island and seen people having  
24 sex outside, have you ever attempted to ask  
25 those individuals if you could photograph them?

Page 70

1 Alper  
2 A. No.  
3 Q. So you don't know if they would agree  
4 or not, correct?  
5 A. With pretty fair certainty I know that  
6 they would not agree.  
7 Q. What is that based on?  
8 A. They are having anonymous sex.  
9 Q. So you don't think that they want to  
10 be photographed, is that right?  
11 A. I can say with a fair amount of  
12 certainty that they would not want to reveal  
13 their identity for any formal record.  
14 Q. So if you were to take these  
15 individuals' photographs without checking their  
16 IDs how would you know whether they were 18 or  
17 over?  
18 A. I wouldn't.  
19 Q. You have already mentioned that you  
20 have taken photographs of you and your husband.  
21 Have these photographs been of you and your  
22 husband having sex?  
23 A. Yes.  
24 MS. BAUMGARDNER: Excuse me. Just for  
25 the record, this is protected information.

Page 71

1 Alper  
2 MS. WYER: OK.  
3 MS. BAUMGARDNER: I think it requires  
4 me to say that.  
5 Q. Have you ever sent any of these  
6 photographs to anyone by e-mail?  
7 A. For publication in Finland -- not in  
8 Finland, in Norway. It's Norway or Sweden for  
9 Cupido.  
10 Q. Have you ever sent any of the  
11 photographs of you and your husband engaged in  
12 sexual conduct by text message?  
13 A. No.  
14 Q. Have you ever posted any of these  
15 photographs on a social networking site?  
16 A. No.  
17 Q. Do you have a Facebook account?  
18 A. I do.  
19 Q. Do you consider that work related?  
20 A. I don't know what I consider it. I  
21 rarely go to it. I can't figure it out. That's  
22 what I think of Facebook.  
23 Q. Your circle of friends, do you think  
24 that they are very active in Facebook?  
25 A. Maybe some more than others.

Page 72

1 Alper  
2 Q. And are you generally aware of  
3 whether -- never mind that.  
4 MS. WYER: Can we take a break just so  
5 we can confer?  
6 MS. BAUMGARDNER: Sure.  
7 (Recess)  
8 Q. How did you become a plaintiff in this  
9 case?  
10 A. Honestly, I don't remember exactly.  
11 I think possibly one of the other  
12 plaintiffs gave my name knowing the kind of  
13 pictures that I have shot. I think that's how  
14 it came about.  
15 Q. Are you personally acquainted with any  
16 of the other plaintiffs in the case?  
17 A. Yes.  
18 Q. Which ones?  
19 A. Barbara Nitke, David Steinberg, Betty  
20 Dodson. I can't remember who else is involved.  
21 MS. BAUMGARDNER: She's identified  
22 Victor Perlman and Eugene Mopsik in her earlier  
23 testimony.  
24 Q. So Eugene Mopsik and Victor Perlman as  
25 officers and representative of ASMP?

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1 Alper  
2 requirements?  
3 A. I haven't spoken to any publishers  
4 about it.  
5 Q. Do you have any other concerns  
6 regarding the 225and 2257A requirements that you  
7 haven't identified here?  
8 A. I don't remember all of the details of  
9 those two to be able to say.  
10 Q. But nothing stands out in your mind as  
11 something that you are particularly concerned  
12 about that you haven't mentioned?  
13 A. I don't remember all the details to be  
14 able to respond.  
15 Q. But you have identified certain  
16 things, so I assume that those issues are the  
17 ones that stand out in your mind as a concern?  
18 A. Yes.  
19 MS. WYER: I think that's it.  
20 THE WITNESS: Terrific.  
21 MS. BAUMGARDNER: OK. I would like to  
22 ask a follow-up question if I may.  
23 EXAMINATION  
24 BY MS. BAUMGARDNER:  
25 Q. Ms. Alper, you were asked about

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1 Alper  
2 photographing the people you said you observed  
3 having sex on Fire Island.  
4 A. Right.  
5 Q. Kathy will correct me if I'm wrong, if  
6 I misphrase this, but I believe you were asked  
7 without checking their IDs, there was no way for  
8 you to know that they were over 18.  
9 MS. BAUMGARDNER: Have I phrased that  
10 fairly, Ms. Wyer? Was that the question to her?  
11 MS. WYER: I think we would have to go  
12 back and look at the transcript.  
13 MS. BAUMGARDNER: I believe, if you  
14 accept it, something like that, and you said  
15 there wasn't.  
16 Q. Is there any other way that you could  
17 tell, apart from checking someone's photo ID, to  
18 establish whether they were an adult or not?  
19 A. Yes. I could tell by visually I could  
20 tell that they weren't teenagers.  
21 Q. As far as identifying all of the  
22 burdens and issues you have with 2257 and  
23 compliance, you have identified other, a  
24 complete issue after consulting with your legal  
25 counsel in responding to the government's paper

Page 83

1 Alper  
2 discovery that we call interrogatories, have you  
3 not?  
4 A. Say the question again.  
5 Q. You recall that the government asked  
6 you certain questions and you had to write down  
7 on paper?  
8 A. Right.  
9 Q. Then you reviewed your answers after  
10 consulting with me?  
11 A. Yes.  
12 Q. Then you swore to the truth and  
13 accuracy of those answers?  
14 A. Yes.  
15 Q. So, in addition to your testimony here  
16 as far as any concerns and problems you have,  
17 you also adopt what you have said in the written  
18 discovery to the government?  
19 A. Oh, yeah. Yeah, absolutely.  
20 MS. BAUMGARDNER: That is all I have.  
21 MS. WYER: We have follow-up.  
22 EXAMINATION  
23 BY MS. WYER:  
24 Q. In regard to what you just said about  
25 being able to visually determine whether someone

Page 84

1 Alper  
2 was a teenager, with what degree of accuracy do  
3 you believe you can determine someone's age by  
4 looking at them?  
5 MS. BAUMGARDNER: Objection. That  
6 wasn't her testimony.  
7 A. I think I can fairly accurately tell  
8 if somebody is a teenager or not.  
9 Q. By a teenager, do you mean anyone  
10 between the age of 13 and 19?  
11 A. Anyone under the age of 18.  
12 Q. Can you tell by looking at someone  
13 whether they are 17 or 18?  
14 A. Probably not.  
15 Q. Do you think you can tell by looking  
16 at someone whether they are 17 or 19?  
17 MS. BAUMGARDNER: Objection.  
18 A. Maybe. I have absolutely no interest  
19 in photographing anyone who is underage. I have  
20 no interest in child pornography. I am totally  
21 opposed to it. I have no interest at all in  
22 engaging anyone who is not of legal age, period.  
23 Q. Do you think that people under the age  
24 of 18 have sex?  
25 A. I think there are news reports that

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1 Alper  
2 people under the age of 18 have sex. I don't  
3 have any doubt.  
4 Q. Is there any reason for you to assume  
5 no one under the age of 18 ever has sex outside?  
6 A. I have no idea.  
7 Q. So, as far as you know, people under  
8 the age of 18 may have sex outside?  
9 A. I have no idea. But the area that I  
10 go to, the area where we are talking about on  
11 Fire Island is not a teenage hangout. It is a  
12 place where adults go. It's not teenagers who  
13 go there.  
14 Q. Is there any person at the entrance to  
15 this area checking IDs?  
16 A. It is an island, it is a public space,  
17 but it is a residential space, so it's not a  
18 public beach. I mean, it's -- it's too  
19 complicated. It is an island.  
20 Q. Are people under the age of 18  
21 prohibited from visiting the island?  
22 A. No.  
23 Q. So, as far as you know, there may be  
24 people under the age of 18 on the island?  
25 A. There are families, but there are

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1 Alper  
2 communities and areas that are a family  
3 community or not a family community.  
4 Q. This area where you observed people  
5 having sex outside, is there any fence around  
6 this area?  
7 A. No.  
8 Q. Is there any checkpoint that someone  
9 has to pass in order to access this area?  
10 A. No.  
11 Q. Do you think that you can tell by  
12 looking whether someone is 30 or 40?  
13 MS. BAUMGARDNER: Objection.  
14 A. Maybe.  
15 Q. Does it depend on the person?  
16 A. Yes. People differ.  
17 Q. Can you tell whether someone is 40 or  
18 55?  
19 MS. BAUMGARDNER: Objection.  
20 A. No.  
21 Q. Can you tell whether someone is 25 or  
22 30?  
23 MS. BAUMGARDNER: Objection.  
24 A. No.  
25 Q. Can you tell whether someone is 20 or

Page 87

1 Alper  
2 30?  
3 MS. BAUMGARDNER: Objection.  
4 A. Maybe. Probably.  
5 Q. Does it depend on the person?  
6 MS. BAUMGARDNER: Objection.  
7 A. Yes.  
8 Q. Do you have any specialized training  
9 in identifying someone's age by looking at them?  
10 A. Is there such a thing?  
11 Q. Is the answer no?  
12 A. No.  
13 MS. WYER: I think that's all.  
14 MS. BAUMGARDNER: OK. Thank you very  
15 much.  
16 THE WITNESS: Thanks.  
17 MS. BAUMGARDNER: I think we'll read,  
18 Sam.  
19 (Deposition concluded at 3:15 p.m.)  
20  
21 BARBARA ALPER  
22  
23 Subscribed and sworn to  
24 before me this day  
25 of , 2013.

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1 Alper  
2  
3 I N D E X  
4  
5 WITNESS: Barbara Alper  
6 EXHIBITS  
7 Description Page  
8 Alper 1 8  
9 Alper 2 10  
10 Alper 3 29  
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**In The Matter Of:**  
*FREE SPEECH COALITION, INC v*  
*THE HONORABLE ERIC H. HOLDER*

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*March 15, 2013*

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*SOUTHERN DISTRICT REPORTERS*  
*500 PEARL STREET*  
*NEW YORK, NY 10007*  
*212 805-0330*

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Page 1

1                                Dodson  
2 UNITED STATES DISTRICT COURT  
3 EASTERN DISTRICT OF PENNSYLVANIA  
4 -----x  
5  
6 FREE SPEECH COALITION, INC. et  
7 al.,  
8  
9                                Plaintiffs,  
10  
11 v.                              No. 09-4607  
12  
13 THE HONORABLE ERIC H. HOLDER,  
14  
15 Defendant.  
16  
17 -----x  
18  
19  
20  
21  
22  
23  
24  
25

March 15, 2013  
12:50 p.m.

Deposition of BETTY DODSON, taken by  
Defendant, at the United States Attorney's  
Office, One St. Andrew's Plaza, New York, New  
York, before Samuel G. Mauro, Jr., a Registered  
Merit Reporter and Notary Public of the State of  
New York.

Page 2

1                                Dodson  
2                                A P P E A R A N C E S  
3  
4     BERKMAN, GORDON, MURRAY & DEVAN  
5     Attorneys for Plaintiffs  
6                55 Public Sq., Ste. 2200  
7                Cleveland, OH 44113-2000  
8     BY: LORRAINE BAUMGARDNER, ESQ.  
9  
10  
11    United States Department of Justice  
12    Civil Division, Federal Programs Branch  
13          Attorneys for Defendant  
14              20 Massachusetts Avenue, N.W.  
15              Room 7130  
16              Washington, DC 20530  
17    BY: KATHRYN WYER, ESQ.  
18              HECTOR G. BLADUELL, ESQ.  
19  
20    ALSO PRESENT: Carlin Ross  
21  
22  
23  
24  
25

Page 3

1                                Dodson  
2 BETTY DODSON,  
3        called as a witness by Defendant,  
4        having been duly sworn, testified as follows:  
5 EXAMINATION  
6 BY MR. BLADUELL:  
7        Q.    Good afternoon, Ms. Dodson.  
8                As I said, my name is Hector Bladuell.  
9        I represent the government in this lawsuit.  
10       This is a challenge to the constitutionality of  
11       Section 2257 under the First and Fourth  
12       Amendments.  
13               Ms. Dodson, have you been deposed  
14       before?  
15       A.    Deposed? Yes.  
16       Q.    And can you tell us in what instance  
17       when have you been deposed before?  
18       A.    It was so long ago; it was ages ago.  
19       It was a lawsuit for a company that had a  
20       construction on the sidewalk.  
21       Q.    It was not related to sexually  
22       explicit images?  
23       A.    It was what?  
24       Q.    Not related to sexually explicit  
25       images?

Page 4

1                                Dodson

2        A.    Nothing, no.

3        Q.    The overall purpose of this deposition

4        is not to discuss the merits of your claim. The

5        purpose is for us to ask you questions so we can

6        understand better your claim. If you don't

7        understand a question that I ask, please ask me

8        to clarify --

9        A.    Oh, I will.

10       Q.    And I will rephrase or ask it again.

11       -- your counsel, Ms. Baumgardner here,

12       will make objections to some of my questions.

13       Unless she instructs you not to answer, you can

14       answer the question.

15       A.    OK.

16       Q.    I understand that you have a hearing

17       impairment, correct?

18       A.    I have my hearing aids all the way up,

19       but it's still difficult.

20       Q.    Does your hearing impairment affect

21       your ability to remember details about things

22       that happened before?

23       A.    No.

24       Q.    Are you under any medication that

25       would impair your ability to remember?



Page 5	Page 7
<p>1                   Dodson</p> <p>2       A.   No, I take no meds.</p> <p>3       Q.   No medical condition that would impair</p> <p>4       your ability to remember?</p> <p>5       A.   None.</p> <p>6       Q.   Now, Ms. Dodson, have you prepared for</p> <p>7       this deposition?</p> <p>8       A.   Have I been what?</p> <p>9       Q.   Prepared?</p> <p>10      A.   Yes.</p> <p>11      Q.   Can you describe the steps that you</p> <p>12      took to prepare for the deposition.</p> <p>13      A.   Well, you asked a lot of questions,</p> <p>14      and we discussed it, yes.</p> <p>15      Q.   By "you," you mean your counsel?</p> <p>16      A.   Yes.</p> <p>17      Q.   Ms. Baumgardner?</p> <p>18      A.   Yes.</p> <p>19      Q.   Did you review any documents in</p> <p>20      connection with your preparation?</p> <p>21      A.   Documents, no.</p> <p>22      Q.   You didn't read any documents to</p> <p>23      prepare for the deposition?</p> <p>24      A.   No, I didn't.</p> <p>25      Q.   Did you make any notes to prepare for</p>	<p>1                   Dodson</p> <p>2       A.   Yes.</p> <p>3       Q.   That you run?</p> <p>4       A.   Yes.</p> <p>5       Q.   What is the name of the company?</p> <p>6       A.   Bad Media. Those are my initials.</p> <p>7       Q.   You are the president of Bad Media?</p> <p>8       A.   I'm the founder.</p> <p>9       Q.   The founder?</p> <p>10      A.   Yeah.</p> <p>11      Q.   When did you start Bad Media?</p> <p>12      A.   Five years ago, approximately.</p> <p>13      Q.   So 2008, approximately?</p> <p>14      A.   See, it is very difficult for me to</p> <p>15      remember dates. You know, ask me anything about</p> <p>16      sex and I've got it nailed. Date, I don't know.</p> <p>17      She knows dates.</p> <p>18      Q.   Before founding Bad Media, what did</p> <p>19      you do?</p> <p>20      A.   Same thing. I had a website, and I</p> <p>21      was teaching and I ran workshops and I had</p> <p>22      private sessions.</p> <p>23      Q.   Do you remember the name of the</p> <p>24      website?</p> <p>25      A.   Betty Dodson.</p>
Page 6	Page 8
<p>1                   Dodson</p> <p>2       the deposition?</p> <p>3       A.   None.</p> <p>4       Q.   Could you please describe what your</p> <p>5       current occupation is.</p> <p>6       A.   Yes. I am a sex educator, and I am</p> <p>7       answering questions on a website that I run with</p> <p>8       my partner, Carlin.</p> <p>9       Q.   By sex educator, what do you mean?</p> <p>10      A.   I am a Ph.D. sexologist, and I have</p> <p>11      been teaching women about orgasms for the last</p> <p>12      40-some years.</p> <p>13      Q.   Do you also produce sexually explicit</p> <p>14      images?</p> <p>15      A.   I have in the past, yes.</p> <p>16      Q.   When you say in the past, what date</p> <p>17      ranges?</p> <p>18      A.   Well, all right. Just let me think a</p> <p>19      minute. I produced videotapes, DVDs in the</p> <p>20      '90s. And I think we had one -- when did that</p> <p>21      one come out the recent --</p> <p>22      MS. ROSS: I can't really answer.</p> <p>23      A.   Oh, there was one that we produced a</p> <p>24      couple of years ago.</p> <p>25      Q.   Do you have a company?</p>	<p>1                   Dodson</p> <p>2       Q.   Betty Dodson. OK.</p> <p>3       Do you have a college degree?</p> <p>4       A.   Yes. And I also have a Ph.D. from a</p> <p>5       private school in San Francisco.</p> <p>6       Q.   Where did you go to college?</p> <p>7       A.   Wichita University.</p> <p>8       Q.   Wichita?</p> <p>9       A.   Wichita University.</p> <p>10      Q.   Is that in Kansas?</p> <p>11      A.   Nowhere else.</p> <p>12      Q.   What was your major?</p> <p>13      A.   Art.</p> <p>14      Q.   What do you mean by art?</p> <p>15      A.   Oh, wait a minute. I didn't</p> <p>16      matriculate at the university. Then I came to</p> <p>17      New York and I went to art school for five</p> <p>18      years. You don't matriculate in art school. I</p> <p>19      got a lot of scholarships.</p> <p>20      Q.   OK. But in this university in Kansas</p> <p>21      that you said --</p> <p>22      A.   Yes.</p> <p>23      Q.   -- what was your major?</p> <p>24      A.   Art.</p> <p>25      Q.   Art meaning?</p>

Page 9

1                     Dodson  
2       A.   Drawing and painting.  
3       Q.   After you took art, do you remember  
4       the year that you graduated?  
5       A.   I graduated, you don't -- in art  
6       school you don't graduate. You don't  
7       matriculate. You just go to school.  
8       Q.   So you didn't get a degree a  
9       bachelor's degree in art?  
10      A.   No. No, I did not.  
11      Q.   For how long did you study art in  
12      Kansas?  
13      A.   Oh, I got out of Kansas right away. I  
14      moved to New York. So I was in art school in  
15      New York.  
16      Q.   When was your move from Kansas to New  
17      York? Do you remember the date?  
18      A.   1950.  
19      Q.   1950. In New York, have you taken art  
20      courses?  
21      A.   In New York did I take art courses?  
22      It is not like we take courses. We do it. We  
23      draw and we paint.  
24      Q.   OK. But you have not --  
25      A.   I went to the national academy of

Page 10

1                     Dodson  
2       design and the students league, and I got a lot  
3       of scholarships. I'm good.  
4       Q.   Have you received a degree from these  
5       institutions?  
6       A.   No, we don't do degrees for art. You  
7       do art.  
8       Q.   The only degree that you have is a  
9       Ph.D. that you mentioned, correct?  
10      A.   Yes. From the -- it is a private  
11      school in San Francisco. I think it's the only  
12      one that you are judged on your merit and not  
13      your academic background.  
14      Q.   So do I understand correctly that you  
15      don't need a bachelor's degree to matriculate?  
16      A.   They like that, but in my case it was  
17      waived because I had produced so much.  
18      Q.   When did you get this Ph.D.? What  
19      year, if you remember?  
20      A.   '94. I'm guessing. I think '94.  
21      Q.   How many years of study did it take  
22      you to get the Ph.D.?  
23      A.   25 years of actually running workshops  
24      and teaching.  
25      Q.   Do you remember the date that you

Page 11

1                     Dodson  
2       started taking courses at this institute in San  
3       Francisco?  
4       A.   You don't -- you are on a wrong track.  
5       This is not a strict academic routine. You are  
6       judged on your merit. Ooh, surprise. Shocking,  
7       I know.  
8       Q.   How many years did you stay in San  
9       Francisco?  
10      A.   I actually lived there part-time for a  
11      few years, but it had nothing to do with living  
12      there to go to school.  
13      Q.   Did you have any coursework related to  
14      this Ph.D., classes that you took?  
15      A.   The coursework was the work I had been  
16      doing and continue to do. So you might say it  
17      is an honorary degree. In other words, it's  
18      what they call fieldwork. I'm working in the  
19      field with women.  
20      Q.   Did they require you to take any  
21      courses at this institute?  
22      A.   No. At that point my work was  
23      established, and I was quoted in many, many,  
24      many sex books. So it is not an academic  
25      approach. It is you are judged on your merit

Page 12

1                     Dodson  
2       and what you have accomplished and your  
3       reputation and how many people refer to your  
4       work in their work. I am way ahead of the  
5       curve. I think it's called being a genius.  
6       Q.   So if I am understanding correctly,  
7       the people who run the institute evaluated your  
8       work throughout your career and decided to grant  
9       you a Ph.D.?  
10      A.   Yes.  
11      Q.   Have you taken any courses related to  
12      medical training?  
13      A.   No.  
14      Q.   No courses in physiology?  
15      A.   Well, I studied anatomy for six years  
16      as an artist, drawing the nude, but no formal.  
17      Q.   No formal, OK.  
18      Courses in pediatrics?  
19      A.   Pardon?  
20      Q.   Courses in pediatrics?  
21      A.   No.  
22      Q.   Or internal medicine? No?  
23      A.   None of that. You guys are all up on  
24      the wrong track anyway.  
25      Q.   The Ph.D. that you're mentioning is

Page 13

1                   Dodson  
2 not a medical degree?  
3     A. Not at all.  
4     Q. Did you have to write a thesis to  
5 obtain this Ph.D.?  
6     A. I documented my work. They have a  
7 folder at the university that cites all of the  
8 references to my work. So, once again, you have  
9 to deal with fieldwork rather than academic  
10 sitting and writing and learning and reading and  
11 stupid things that you have to do.  
12     Q. So could you describe, how have you  
13 learned the issues and materials about sexuality  
14 in general? Have you read books?  
15     A. Oh, absolutely. The teacher is the  
16 learner, and my method of teaching stems from  
17 the feminist movement that started in the early  
18 '70s. We called it consciousness raising, where  
19 we simply sit in a circle and we listen to one  
20 another talk using first person.  
21         So, people sharing their history, what  
22 has gone on in their lives is the best learning  
23 there is as possible. It is no theory. It is  
24 people's actual lives, and we share that  
25 information with each other. You can't get that

Page 14

1                   Dodson  
2 out of no book, honey.  
3     Q. Have you done any research on  
4 sexuality?  
5     A. My work is research.  
6     Q. So listening to people --  
7     A. Absolutely.  
8     Q. -- is the research?  
9         Other than listening to what people  
10 tell you, have you read books about sexuality as  
11 well?  
12     A. I've read practically, let's say I've  
13 perused a lot of books, and they bore me because  
14 I'm past it.  
15     Q. It is fair to say that you consider  
16 yourself an expert in sexuality?  
17     A. On female sexuality. I know a lot  
18 about guys, too, but I focus on women. Do you  
19 have a question?  
20     Q. Not about that, no.  
21         You know Ms. Carlin Ross?  
22     A. Carlin, yes.  
23     Q. She is your business partner?  
24     A. Yes.  
25     Q. Does she report to you in your

Page 15

1                   Dodson  
2 company?  
3     A. No.  
4     Q. Are you her superior?  
5     A. No. We're equals. Another shocking  
6 concept.  
7     Q. When did you meet Ms. Ross?  
8     A. It was in -- can't I ask her?  
9     Q. No.  
10         MS. ROSS: No, you are answering the  
11 questions.  
12     A. It's five or six years ago, so  
13 somebody do the math for me.  
14     Q. All the questions that I'm asking you  
15 are about your recollection.  
16     A. OK.  
17     Q. So just review your recollection.  
18     A. As I recall, it was five or six years  
19 ago.  
20     Q. Can you describe your business  
21 relationship with Ms. Ross?  
22     A. Yes, we're equal partners.  
23     Q. In doing what?  
24     A. In running a website that is basically  
25 for women, but it's very beneficial for men who

Page 16

1                   Dodson  
2 relate to women if they're lucky.  
3     Q. What is the division of work between  
4 you and Ms. Carlin Ross in relation to your  
5 business?  
6     A. She is the -- she is my girl geek and  
7 I'm the educator. I've got the brand and the  
8 years of information.  
9     Q. What do you mean by "girl geek"?  
10     A. She's the techy. She runs the  
11 website, she knows all about everything that  
12 goes on in cyberspace. And in my 80s I'm a  
13 latecomer to cyberspace, so I need someone who  
14 really understands it, and she's got it nailed.  
15     Q. You produce sexually explicit videos,  
16 correct?  
17     A. Not now, but we -- yeah.  
18     Q. You have produced?  
19     A. I have, yes.  
20     Q. Since 2009?  
21     A. I have.  
22     Q. Can you explain what you do to produce  
23 the videos?  
24     A. What I do to produce videos?  
25         Well, I have a topic, and it's usually

Page 17

1                   Dodson  
2 female orgasm because way too many women were  
3 not having orgasms. We're faking you guys out  
4 right and left, and they really do want to  
5 learn. But we can't use the male model of  
6 sexual response for women.  
7           So this is what I am trying to get  
8 through to the world, is that we operate  
9 differently, and that after listening to women  
10 tell their stories for 45 years, I pretty much  
11 understand the problem. So the tapes are set up  
12 to help women discover their own bodies and  
13 their own orgasmic response.  
14 Q. You have done this work after the  
15 statutes in this litigation took effect?  
16 A. Huh?  
17 Q. You don't understand the question?  
18 A. No, I don't.  
19 Q. Do you know the statute in question in  
20 this case? Section 2257?  
21 A. I know what 2257 is, yes.  
22 Q. So you have done this work after  
23 Section 2257 was enacted?  
24 A. And before.  
25 Q. Before and after?

Page 18

1                   Dodson  
2 A. Yes.  
3 Q. So even if Section 2257 currently is  
4 the law, you have continued doing that? You  
5 have continued doing your work?  
6 A. Yes. Unless we win the lawsuit,  
7 ba-ba-ba.  
8 Q. Has the statute prevented you from  
9 doing your work?  
10 A. Oh, yeah. One of my research projects  
11 the Genital Art Gallery, the country is  
12 drenched, male and female, in genital shame.  
13 The fig leaf has got to come off.  
14       So, in order to do this, I requested  
15 people send in an image of their genitals, and  
16 they give me just a little information about the  
17 first time they masturbated, how did you start?  
18 How did you discover your sexuality? Now, some  
19 go into great lengths and some say very little.  
20       But there was, until you guys came  
21 along with your 2257, this was my research  
22 project, and it was very healing for people to  
23 see a huge range of genitals, because we are all  
24 different. And in porn -- which is not what I  
25 am, I am education -- the female genitals are

Page 19

1                   Dodson  
2 altered for the boys' taste. They all end up  
3 looking like little dolls. And the males are  
4 chosen in porn because they've got big dicks,  
5 and this does not represent the population in  
6 terms of their genitals.  
7       So everybody is walking around  
8 thinking there is something wrong with what's  
9 between their legs. This is damaging, damaging  
10 to everyone's sex life. As an educator I am  
11 dedicated to changing that.  
12 Q. How many depictions of genitals are  
13 there in the Genital Art Gallery?  
14 A. Well, there were many, many before  
15 your law came out.  
16 Q. How many?  
17 A. I've never counted them, honey.  
18 Q. Would you say that hundreds?  
19 A. Yes, I had hundreds, more than, yes,  
20 many hundreds.  
21 Q. Right now, if I go to your website, do  
22 you know how many there are?  
23 A. No, but you're welcome to go and  
24 count.  
25 Q. Would you say that there's more than

Page 20

1                   Dodson  
2 50?  
3 A. More than 50. I am so disheartened  
4 with what's gone on because it's literally  
5 brought that project of mine to a halt that I  
6 haven't been there lately. No. It's  
7 depressing. I'm answering questions directly to  
8 people who write in to me.  
9 Q. Have you received submissions for your  
10 gallery after the law that you are challenging  
11 took effect?  
12 A. No, it stopped. I mean a couple,  
13 yeah. They're not going to send their driver's  
14 license and all that information. It's  
15 daunting. The whole thing was based on  
16 anonymity.  
17       If you're anonymous, you will tell the  
18 truth. But if you think it a going to be under  
19 your own name, ew, especially when it comes to  
20 sexuality, you know, America and sex, we're  
21 idiots.  
22 Q. Have you had people tell you that they  
23 are not going to submit images?  
24 A. They don't have to tell me. It's not  
25 coming in.

Page 21

1                   Dodson  
2       Q.   My question is do you recall people  
3       telling you, I am not going to submit images  
4       because of the requirements of submitting an ID?  
5       A.   I wouldn't handle that information.  
6       Q.   OK.  So --  
7       A.   My partner would.  
8       Q.   So you don't know for sure, correct?  
9       MS. BAUMGARDNER: Objection.  You can  
10      go ahead and answer.  I'm objecting for the  
11      record.  
12      THE WITNESS: I say what?  
13      MS. BAUMGARDNER: You go ahead and  
14      answer.  I am just objecting for the report.  
15      A.   I don't know.  No, I don't know.  
16      Q.   You cannot think of the name of one  
17      person that has said I am not going to submit  
18      it?  
19      A.   Anonymity.  
20      Q.   You don't have to tell me the name,  
21      but can you think of one person that has told  
22      you, I am not going to submit images to the  
23      gallery?  
24      A.   I can't think of one person's name.  I  
25      think there was a Hector.

Page 22

1                   Dodson  
2       Q.   It was not me.  
3       A.   Pity.  
4       Q.   You said something about the images of  
5       female genitalia that you see in porn --  
6       A.   Yes.  
7       Q.   -- in the mainstream porn.  
8       Can you describe that, or can you  
9       describe what you were meaning to say when you  
10      said that?  
11      A.   Can I describe the alterations that  
12      they do?  
13      Q.   Why do they do alterations?  
14      A.   The fashion or the style is no inner  
15      lips to be extended beyond the outer lips.  So  
16      the inner lips are surgically removed, which has  
17      created this whole fashion now with young women,  
18      because their boyfriends are watching porn and  
19      beating off.  So they look at pictures and the  
20      women all have no inner lips showing.  They also  
21      bleach the asshole and dye it pink, no hair.  
22      OK.  And then also cosmetic surgery,  
23      any moles, bumps, pimples, whatever, stretch  
24      marks, all disappear.  So it's very unrealistic.  
25      This is the fashion for porn besides

Page 23

1                   Dodson  
2       big boobs and blonde hair and all the other  
3       stuff.  
4       Q.   Does this fashion make them look  
5       younger?  
6       A.   Yes.  It sort of infantilizes women, I  
7       think so.  
8       Q.   The purpose is to look younger?  
9       A.   Yes, yes.  You guys don't seem to like  
10      mature women because we know too much.  
11      Q.   If someone is looking at a picture of  
12      a performer who's had this surgery, the surgery  
13      would affect the person's ability, the viewer's  
14      ability to determine the age of that performer?  
15      MS. BAUMGARDNER: Objection.  
16      A.   No.  
17      Q.   No?  Let's say that we have a  
18      performer that has had this alteration in the  
19      genitals to look younger than she really is.  
20      A.   I don't know that it makes them look  
21      younger.  It alters the image of the genitals.  
22      So, in other words, I think it was a cosmetic  
23      surgeon that established the clamshell, some  
24      jackass out in LA, and boy is he making a  
25      killing driving around in his beamer.

Page 24

1                   Dodson  
2       Q.   I'm going to show you a document.  
3       It's been marked already as Exhibit RD-4.  
4       MS. BAUMGARDNER: I can share my copy.  
5       Q.   The second paragraph.  
6       A.   Do you have a --  
7       Q.   Can you read the third paragraph?  
8       A.   Barely.  Why I started the genital  
9       gallery.  You know I wrote this a hundred years  
10      ago.  
11      Q.   This paragraph is something that you  
12      wrote, correct?  
13      A.   Correct.  Look, it says in 1998.  
14      That's when my website went up.  
15      Q.   And in the third paragraph, "Today  
16      many women," correct?  
17      A.   Yes.  
18      Q.   Do you follow me I am going to read  
19      it.  "Today many women in the adult industry  
20      have undergone surgery for the removal of their  
21      extended inner lips to achieve what one surgeon  
22      calls a clamshell look reminiscent of a  
23      prepubescent girl.  Other women began to want a  
24      similar look."  
25      A.   Yes.



Page 25

1 Dodson  
2 Q. Did I read that accurately?  
3 A. Yes, you read it correctly.  
4 Q. This is something that you wrote?  
5 A. Yes, I did.  
6 Q. Now, you had a basis for writing this,  
7 correct?  
8 A. It is just what I told you. Yes.  
9 Q. I mean you didn't make this up,  
10 correct?  
11 A. Make it up?  
12 Q. Yes. Is it correct you did not make  
13 this up?  
14 A. Well, I made it up, but it's the  
15 truth.  
16 Q. It's the truth. OK.  
17 You didn't -- it is not a lie, it's a  
18 hundred percent?  
19 A. It is a fact.  
20 Q. It is a fact. OK.  
21 A prepubescent girl, do you know what  
22 age is a prepubescent girl?  
23 A. Anywhere between, I don't know, 12 to  
24 18.  
25 Q. 12 to 18.

Page 26

1 Dodson  
2 Prepubescent is before puberty? Is  
3 that what it means?  
4 A. You know, I really don't know what  
5 prepubescent means. That's Grant. That was my  
6 editor at the time. It's the youth culture that  
7 everyone is addicted to. And I know where  
8 you're going with this, which is a lot of crap.  
9 But men don't like contemporary or older women.  
10 They want children or younger women, because  
11 they can pull the wool over their eyes, because  
12 then this young girl -- whatever. But I got  
13 news for you. Some children at five are already  
14 sexual, not with a partner but with themselves.  
15 So what are you getting at here?  
16 Q. I get to ask the questions.  
17 A. "I get to ask the questions."  
18 MS. BAUMGARDNER: OK, Betty.  
19 Go ahead. Pose your question.  
20 Q. Do you have a question?  
21 A. Do I have one?  
22 Q. Yes.  
23 A. I thought you were going to ask me  
24 one.  
25 Q. Yes.

Page 27

1 Dodson  
2 A. Go ahead.  
3 Q. About the deposition. Do you have a  
4 question about the deposition?  
5 A. I don't know what you mean.  
6 Q. The deposition?  
7 MS. ROSS: Do you have a question  
8 about what's going on right now?  
9 THE WITNESS: No.  
10 Q. OK.  
11 A. Except it's boring.  
12 Q. Do you have an office?  
13 A. I work in my home.  
14 Q. And your home has how many rooms?  
15 A. A foyer, a living room, a kitchen, and  
16 a back room, bedroom, bedroom/office?  
17 Q. Is that where you keep your 2257  
18 records?  
19 A. Yes. It's out in the foyer in a  
20 separate unit.  
21 Q. Do you keep the IDs of your performers  
22 there?  
23 A. Absolutely. This is way before 2257.  
24 Q. Do you keep the model releases there  
25 as well?

Page 28

1 Dodson  
2 A. Yes, it's in a filing cabinet.  
3 Q. Do you keep any 2257 records outside  
4 of this cabinet?  
5 A. No.  
6 Q. Everything is in the cabinet?  
7 A. Yes.  
8 Q. This cabinet is not in your bedroom?  
9 A. It's in the foyer, in the front room.  
10 Q. Do you have a studio?  
11 Do you have a studio where you record  
12 videos?  
13 A. No, it's always done in my living  
14 room. So it is a living room/workshop  
15 space/studio.  
16 Q. Most of your sexually explicit  
17 depictions are about masturbation?  
18 A. Female orgasm.  
19 Q. Female orgasm. Would it be accurate  
20 to say that 99 percent of them are about that?  
21 A. Uh-huh.  
22 MS. BAUMGARDNER: Betty, you have to  
23 answer yes or no because the court reporter  
24 can't take down.  
25 THE WITNESS: You can't say she nodded

Page 41

1                   Dodson  
2       Q.   My question is did you write it?  
3       A.   No. But I stand behind the concept.  
4       Q.   There is a reference in this writing  
5       about clearly mature, correct?  
6       A.   You lost me.  
7       Q.   In the second sentence of the first  
8       paragraph.  
9       A.   OK, yes. Yes.  
10      Q.   What does it mean to be "clearly  
11      mature adult"?  
12      A.   A woman. A woman doesn't look like a  
13      girl, a child. I guess some try, but they won't  
14      succeed. You can tell by the body shape, by the  
15      breast development, you can tell by the pubic  
16      hair, the genital development, in terms of  
17      visual, looking at a body, and since I am a  
18      painter and drawer of the nude. I have never  
19      even had the opportunity to draw children. I  
20      have to make that up. It is always mature  
21      women.  
22      Q.   Do you have a specific age in mind  
23      that you associate with being clearly mature  
24      adult?  
25      A.   An age? I have women that are 40 and

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1                   Dodson  
2       they act like idiots, so they could be  
3       teenagers, or they could try to be. What was  
4       that?  
5       Q.   Do you have an age that you associate  
6       with someone being clearly mature?  
7       A.   No.  
8       Q.   When does someone become clearly  
9       mature, at what age?  
10      A.   When does someone become mature? As I  
11      said, I have women in their 40s that are like  
12      teenagers.  
13      Q.   So women in their 40s may not be  
14      clearly mature is what you are saying?  
15      A.   Mature physically or mentally  
16      emotionally or sexually? What?  
17      Q.   Let's say about the way they look.  
18      A.   Their appearance?  
19      Q.   Yes. At what age does someone look  
20      clearly mature?  
21      A.   Teens.  
22      Q.   15?  
23      A.   Possibly.  
24      Q.   A 15-year-old could look clearly  
25      mature?

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1                   Dodson  
2       A.   Not clearly mature. She would have to  
3       have on a lot of makeup and the clothes and how  
4       she's dressed.  
5       Q.   A 13-year-old could look --  
6       A.   No.  
7       Q.   A 16-year-old could look clearly  
8       mature?  
9       A.   Maybe.  
10      Q.   17-year-old?  
11      A.   Could look mature?  
12      Q.   Clearly mature.  
13      A.   17 -- I don't think this way. I don't  
14      know what you're getting at.  
15      Q.   I am just asking you.  
16            An 18-year-old would look clearly  
17      mature?  
18      A.   It depends on the individual.  
19      Q.   It depends on the individual?  
20      A.   Yes.  
21      Q.   Do you agree with me that looking at  
22      someone it might be difficult to determine that  
23      person's exact age?  
24      A.   It could be. Yes, it could be  
25      difficult to determine.

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1                   Dodson  
2       Q.   Why could it be difficult to determine  
3       a person's age by looking at them?  
4       A.   This doesn't make sense to me, but the  
5       way they're dressed, their mannerism, their  
6       speech, overall demeanor, sophistication.  
7       Q.   Having surgery, having cosmetic  
8       surgery could affect how old people look?  
9       A.   Yes. When I had a facelift, I dropped  
10      about ten years, but I didn't look like a  
11      teenager.  
12      Q.   How about breast implants? Do they  
13      affect how old a woman looks?  
14      A.   Yes, that could, breast development.  
15      But that's not true either. Because young girls  
16      can have huge breasts, and mature women don't  
17      have any. You can't go on that.  
18      Q.   So breast augmentation does not affect  
19      how old people look or could it affect it?  
20      A.   It could.  
21      Q.   Do you know what other factors may  
22      affect how old people look? You mentioned the  
23      clamshell look?  
24      A.   Well, that is a fashion. You could  
25      have that at any age.

Page 45

1                   Dodson  
2     Q.   But it would affect how old or how  
3     young you look?  
4     A.   No.  
5     Q.   So it is difficult to tell from  
6     looking at a person how old they are?  
7     A.   Yes. Like I'm not sure how old you  
8     are. Let's say you're late 30s, early 40s.  
9           THE WITNESS: He's probably 28.  
10    Q.   So is it difficult to tell how old I  
11    am?  
12    A.   Yeah. I can guestimate but -- you're  
13    cute, but you're young from my point of view. I  
14    would make a pass at you.  
15    Q.   Do you know the physical differences  
16    between a 16-year-old and an 18-year-old?  
17    A.   Physical differences? You can't ask a  
18    general question like that. It's very  
19    individualistic. Absolutely.  
20    Q.   It depends on the person?  
21    A.   Absolutely.  
22    Q.   Between a 17-year-old and a  
23    20-year-old, it would depend on the person?  
24    A.   It would depend on the person.  
25    Q.   Do you know if an 18-year-old can

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1                   Dodson  
2     reach full maturity with respect to pubic hair  
3     before 18, a woman -- I'm sorry. Let me  
4     rephrase that?  
5     A.   Good.  
6     Q.   Can a woman achieve full maturity with  
7     respect to pubic hair before reaching 18?  
8     A.   You lost me.  
9     Q.   OK. Can a 17-year-old reach full  
10    maturity with respect to pubic hair development?  
11    A.   Yes.  
12    Q.   A 16-year-old can fully develop in the  
13    pubic area?  
14    A.   Individual.  
15    Q.   How about women? Can a woman fully  
16    develop her breasts by 16?  
17    A.   Yes. And the other thing is that  
18    because of all the hormones that are going into  
19    food a lot of these girls are maturing way too  
20    soon. They're getting their periods, they're  
21    getting breast development, they're getting  
22    pubic hair, and it's because of the hormones  
23    that are in Mr. Perdue's chicken and all the  
24    fast food outlets.  
25    Q.   Have you read about this somewhere?

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1                   Dodson  
2     A.   Yes. Absolutely. This is a known  
3     fact.  
4     Q.   It is a fact, OK.  
5           Do you interact with a lot of  
6     individuals under the age of 18?  
7     A.   No, because my work is all dealing  
8     with women.  
9     Q.   OK. So it would be fair to say that  
10    you have not seen many individuals under the age  
11    of 18 naked in connection to your work?  
12    A.   Not in connection to my work. But I  
13    have been to nudist colonies.  
14    Q.   I'm sorry?  
15    A.   I have been to nudist colonies where  
16    you see all ages.  
17    Q.   And approximately how many times have  
18    you been to --  
19    A.   I haven't done it recently, because  
20    when you get old you're not so anxious to take  
21    your clothes off.  
22    Q.   You haven't done it in the past five  
23    years?  
24    A.   No. Well, I have a health club where  
25    the women all walk around without clothes on.

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1                   Dodson  
2     Q.   Are there a lot of women under 18 at  
3     that club?  
4     A.   Yeah, they have little kids.  
5     Q.   No, women you have seen naked under  
6     18, or men?  
7     A.   No, we don't have men in our locker  
8     room.  
9     Q.   But it would be fair to say that it is  
10    not many that you've seen?  
11    A.   No, not many.  
12    Q.   You said that you had a Ph.D. in human  
13    sexology, correct?  
14    A.   Correct.  
15    Q.   Does that Ph.D. equip you with  
16    knowledge to determine a person's age by visual  
17    observation?  
18    A.   Wait a minute. I'm glad I don't have  
19    your job. Say it again, honey.  
20    Q.   Does your Ph.D. in human sexology  
21    equip you with knowledge, special knowledge to  
22    determine a person's age by visual observation?  
23    A.   No. You are reaching now. You're  
24    really reaching. That's silly.  
25    Q.   Do you consider that you have special

Page 49

1 Dodson  
2 expertise in telling someone's age by visual  
3 observation?  
4 A. No, I do not. I'm not an expert at  
5 telling age. My expertise is sexuality.  
6 Q. I'm going to show you other documents  
7 if I can find them. Just give me a second.  
8 MS. BAUMGARDNER: Betty, do you need  
9 to take a break at all?  
10 Q. Do you want to take a break?  
11 A. Let's take a break and stretch.  
12 MR. BLADUELL: OK. We will take a  
13 break.  
14 (Recess)  
15 MR. BLADUELL: So, for the record, we  
16 took a little break. We are back.  
17 Q. Ms. Dodson, before the break you were  
18 talking about your production of videos,  
19 correct?  
20 Do you remember?  
21 A. No, but I'll take your word for it.  
22 Q. Is there a reason you don't remember?  
23 A. It's probably because I smoked too  
24 much dope, short-term memory loss.  
25 Q. Do you suffer from short-term memory

Page 50

1 Dodson  
2 loss?  
3 A. Objection.  
4 Q. Is that a no? Is it a joke?  
5 A. No, I don't. I was teasing because  
6 we're back and I am not in my formal chair.  
7 Q. So you have no problem with  
8 recollecting events?  
9 A. No.  
10 Q. We were talking about production of  
11 videos, and you were saying that you are going  
12 to stop producing videos or that you have  
13 stopped producing videos.  
14 Can you clarify that?  
15 A. I shouldn't say that we are going to  
16 stop. I don't know. I doubt if we are going to  
17 produce any more videos because everything is  
18 now online. I do think we are going to be  
19 producing educational materials.  
20 So now I'm getting ready to -- we have  
21 several projects forming the Betty Dodson  
22 Foundation which will set up a formal way to  
23 teach women and men how to do sex education that  
24 is functional and practical because we are not  
25 doing it now. No one is dealing with it and no

Page 51

1 Dodson  
2 one is teaching it.  
3 Q. Would that involve the production of  
4 images, sexually explicit images?  
5 A. It might, yes.  
6 Q. Publishing them?  
7 A. It might.  
8 Q. But you are not sure yet?  
9 A. Well, I will definitely need images of  
10 the female and the male genitalia -- genitalia,  
11 that's so funny -- sex organs.  
12 Q. How many images?  
13 A. Millions.  
14 Q. You would need millions of images?  
15 A. Thousands, hundreds. Enough to show a  
16 variation, so that people don't have a fixed  
17 image.  
18 Q. How much is enough to show a  
19 variation?  
20 A. I'll let you know when I do it. I  
21 have no idea.  
22 Q. How many different varieties of --  
23 A. Infinite. Infinite variety. I would  
24 need to show you enough so that you would  
25 understand that it was an infinite. It's like

Page 52

1 Dodson  
2 looking at people's faces. You know, oval,  
3 round, square, long, diamond, you know. As an  
4 artist just think of the different images that  
5 you can conjure up in terms of any part of the  
6 human body, vast variation.  
7 Q. Do different types of female genitals  
8 have different names?  
9 A. That was my thing to give them an  
10 association to an architectural style.  
11 Q. So how many types or names of female  
12 genitalia do you know?  
13 A. Well, now, let's see.  
14 I would have to think of the different  
15 architect styles. What I am using now, and it's  
16 more like to kind of make everyone feel at ease,  
17 we have Renaissance, we have Gothic, we have  
18 Danish modern, we have Renaissance, we have that  
19 kind of thing. I have run out.  
20 Q. Continue. I interrupted you.  
21 Continue.  
22 A. It's to give a frame of reference, in  
23 other words, styles. Right now the style for  
24 genitals that has been determined by the porn  
25 industry or by these cosmetic surgeons is the

Page 65

1                   Dodson  
2       Q.   Have you seen that picture before?  
3       A.   No.  
4       Q.   Do you know that person?  
5       A.   No.  
6       Q.   Can you tell if that person is clearly  
7 mature?  
8       A.   That ain't no kid.  
9       Q.   So the answer is, yes, you can tell  
10 that that person is clearly mature?  
11      A.   This is a mature woman.  
12      Q.   How can you tell that?  
13      A.   Her titties are sagging a little bit,  
14 and she's got -- I can't really tell, but, you  
15 know, no, that's not a young child, a preteen.  
16 This is a woman.  
17      Q.   So you would say that she's over 18.  
18      A.   Definitely.  
19      Q.   Would you say that she is over 30?  
20      A.   Possibly.  
21      Q.   Can you determine the exact age of the  
22 person just by looking at them?  
23      A.   No. What's going on down below is  
24 what I'd like to know. Whose hands are those,  
25 and what is he doing?

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1                   Dodson  
2       Q.   I'm going to show you another exhibit,  
3 RD-10.  
4           (Exhibit RD-10 was marked for  
5 identification)  
6       Q.   Have you seen that picture before,  
7 Ms. Dodson?  
8       A.   No.  
9       Q.   Can you tell the exact age of the  
10 person depicted?  
11      A.   Can I tell the age?  
12      Q.   Yes.  
13      A.   No. Approximate, anywhere between --  
14 I don't know, 20 and 40. You know you can't  
15 tell these days.  
16      Q.   With a hundred percent accuracy, can  
17 you tell me the --  
18      A.   A hundred percent accuracy?  
19      Q.   -- exact age?  
20      A.   Come on.  
21      Q.   If I show you an ID of that person,  
22 would it assist you in determining the age?  
23      A.   If it's written -- if her date of  
24 birth is written on it, absolutely. So what is  
25 it? You are not going to tell me after all

Page 67

1                   Dodson  
2       this. How old is she?  
3       Q.   I don't recall.  
4       A.   Well, it's not a teen, or a tween,  
5 whatever they call them.  
6       Q.   I am going to show you another  
7 document.  
8       A.   Come on, Hector, show me some dirty  
9 pictures. Let's get down.  
10      Q.   This is going to be marked as Exhibit  
11 No. 11.  
12           (Exhibit RD-11 marked for  
13 identification)  
14      MS. BAUMGARDNER: I'm providing a copy  
15 to counsel, and I am providing a copy to  
16 Ms. Dodson.  
17      A.   This is from my Genital Art Gallery.  
18      Q.   There are three pictures in Exhibit  
19 No. 11, correct?  
20      A.   Yes, but you see they're not very well  
21 taken. These are all like iPhone pictures.  
22 There's not enough light on them.  
23      Q.   Are there three different pictures?  
24      A.   Yes.  
25      Q.   It is not the same person?

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1                   Dodson  
2       A.   It is not the same person.  
3       Q.   How can you tell that it is not the  
4 same person?  
5       A.   The piercing. So she could take --  
6 no. No, it is not the same person.  
7       Q.   Could you determine the exact age of  
8 each individual picture?  
9       A.   Well, obviously this is a more mature  
10 person because they had the guts to get all  
11 those piercings.  
12      Q.   Are you talking about the one in the  
13 middle?  
14      A.   The piercing, yes. That could be a  
15 young woman, but you have to be -- they don't  
16 tattoo or pierce unless you are 18 or over.  
17      Q.   But in terms of the characteristics of  
18 the genitals, can you determine the exact age of  
19 each of those?  
20      A.   No, no.  
21      Q.   Can you tell if they are over 18?  
22      A.   Yeah. Well, this one has to be.  
23      Q.   The one in the --  
24      A.   Yeah, because they won't do that  
25 unless she is.



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1 Dodson  
2 perfectly nice people.  
3 MS. BAUMGARDNER: I would like to  
4 think so.  
5 Q. Remember the list, the long list of  
6 websites and things?  
7 A. I'm taking that with me.  
8 Q. It is your understanding this was a  
9 document that we worked together on and you did  
10 not prepare that list, correct?  
11 A. No, I didn't.  
12 Q. And the very beginning question  
13 indicates that you and Carlin, with the  
14 assistance of counsel answered the  
15 interrogatories?  
16 A. The what. The inter who?  
17 Q. These.  
18 A. Oh.  
19 Q. Who answered them? It was the three  
20 of us, correct?  
21 A. OK.  
22 Q. You understood that?  
23 A. I guess.  
24 MS. BAUMGARDNER: All right. That is  
25 all I have.

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1 Dodson  
2 MR. BLADUELL: I have two questions.  
3 EXAMINATION  
4 BY MR. BLADUELL:  
5 Q. Ms. Dodson, do you know anyone who has  
6 been criminally prosecuted for a violation of  
7 the age verification requirement?  
8 A. Personally, no.  
9 Q. Do you know anyone who is in jail  
10 right now because of a violation of the age  
11 verification requirements?  
12 A. No.  
13 MR. BLADUELL: Thank you.  
14 MS. BAUMGARDNER: I do.  
15 THE WITNESS: Is that it?  
16 MS. BAUMGARDNER: That's it.  
17 (Deposition concluded at 2:40 p.m.)  
18  
19  
20  
21  
22  
23  
24  
25

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1 Dodson  
2  
3 WITNESS: BETTY DODSON  
4 EXHIBITS  
5 Description Page  
6 RD-9 64  
7 RD-10 66  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Page 80

1 Dodson  
2 CERTIFICATE  
3  
4 STATE OF NEW YORK )  
5 : ss  
6 COUNTY OF NEW YORK)  
7  
8 I, Samuel Mauro, Jr., a Registered  
9 Merit Reporter and Notary Public within and for  
10 the State of New York, do hereby certify:  
11 That BETTY DODSON, the witness whose  
12 deposition is hereinbefore set forth, was duly  
13 sworn by me and that such deposition is a true  
14 record of the testimony given by such witness.  
15 I further certify that I am not  
16 related to any of the parties to this action by  
17 blood or marriage and that I am in no way  
18 interested in the outcome of this matter.  
19 In witness whereof, I have hereunto  
20 set my hand this \_\_\_\_\_ day of  
21 \_\_\_\_\_ 2\_\_\_\_\_.  
22  
23  
24 SAMUEL G. MAURO, RMR  
25

***In The Matter Of:***

***Free Speech***

***v.***

***The Honorable Eric H. Holder, Jr.***

---

***Jeffrey J. Douglas VOL I***

***April 9, 2013***

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***Word Index Included with this Condensed Transcript.***

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1 participate in the legal committee?

2 A I don't think so.

3 Q How many members does Free Speech Coalition have  
4 currently?

5 A Probably about 800. That's best guess.

6 Q Can you describe the membership?

7 A Categories of members? The various business  
8 interests are one category -- so manufacturers,  
9 distributors, retailers. Each of those are categories.  
10 They are often divided. For instance, retailers are  
11 divided between brick and mortar and online. I think we  
12 probably distinguish between producers that produce  
13 entirely for the Internet. Toy manufacturers are separate  
14 category. Attorneys and talent agents are a separate  
15 category. Performing artists are a separate category, and  
16 then there's another membership group that are just  
17 individual industry professionals. So if I am a lighting  
18 engineer or makeup artist, I would join in that category.

19 Q How does someone become a member?

20 A Fill out an application and provide a dues  
21 payment.

22 Q These days is that usually done online or?

23 A Yes.

24 Q Do you know?

25 A Yes.

Page 26

1 Q Okay.

2 A Yes.

3 Q Has anyone been rejected as a member that you  
4 know?

5 A I don't know that that has happened. I'm not  
6 certain.

7 Q Are members required to pay dues?

8 A Yes.

9 Q Looking at the bylaws where it talks about  
10 membership dues.

11 A I assure you in the amended bylaws there would be  
12 page numbers.

13 Q Have you found it?

14 A I don't know what I'm looking for. I'm sorry.

15 MS. BAUMGARDNER: Is it a section on dues?  
16 BY MS. WYER:

17 Q I think it's on membership. Okay. On Section 3  
18 on the second page.

19 A Dues, fees, and assessments.

20 Q It says "Dues, fees, and assessments shall vary  
21 by each member depending upon such member's position in  
22 the industry and as determined by the board and \* its  
23 reasonable discretion"; is that right?

24 A Yes. Yes.

25 Q What does that mean?

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1 A An individual's membership would necessarily be  
2 less expensive than a business's. And because of a  
3 perception of -- well, for instance, as I said a camera  
4 person would necessarily pay a smaller amount of dues than  
5 a manufacturer. I think performers, the dues is \$50. I'm  
6 not sure. It might be more than that but a relatively  
7 small amount of money.

8 Q Are the dues determined by category --

9 A Yes.

10 Q -- of profession? Is there a schedule of dues?

11 A Yes.

12 Q Is that on the Web site?

13 A Probably. Should be. I don't know.

14 Q Are there any categories where members are not  
15 required to pay dues?

16 A You can -- not a member in the bylaws sense of  
17 having voting privileges, no. But if you want to donate  
18 money to the organization, get copies of electronic  
19 newsletters, there's -- I don't know what we call it, but  
20 it's sort of, you know, interested person membership  
21 category. I think it's \$25 or something like that.

22 Q But that still requires a fee?

23 A I don't think it really does. Just sort of a  
24 recommended donation. But since there's no specific  
25 rights that are associated with the status, it's just

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1 that, you know, someone wants to support the organization  
2 is interested in our work. They can essentially become an  
3 affiliate something or other, something along those lines,  
4 but it carries no rights or responsibility.

5 Q So technically -- but those individuals are not  
6 actually members?

7 A They are not members within the meaning of the  
8 bylaws. That is, they get a right to vote and other  
9 privileges.

10 Q On what basis would a member be suspended?

11 A I never ran into it; so I don't know. You know,  
12 I have an imagination; so I can probably come up with  
13 something. But I don't know in real life. It hasn't  
14 happened.

15 Q It's never happened?

16 A Not that I know of.

17 Q How does the Free Speech Coalition communicate  
18 with its member?

19 A Not as well as we'd like. We have an e-mail that  
20 goes out regularly on Fridays, reasonably consistently  
21 that provides news that we believe would be of interest.  
22 So some of that involves actual activities of Free Speech  
23 Coalition, other might be just trade information. You  
24 know, a big merger or something. There's a lot of -- we  
25 send out links to news articles that we believe would be

7 (Pages 25 to 28)

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Page 33

1 sexuality. And so like many pejorative phrases or terms,  
2 the object of the hostility often adopts them as a form of  
3 self-protection. So it is unlikely, for instance, that  
4 African Americans would call themselves "niggers" but for  
5 the fact as it was used as hostile for so many years. And  
6 so as a form of self-protection, you take it on and make  
7 it your own.

8 So hardcore pornography was a term, I believe,  
9 that was developed to try to distinguish and denigrate one  
10 portion of the entertainment industry from the rest of the  
11 entertainment industry. That is, when major studios are  
12 making substantial donations to members of Congress, even  
13 though there's a substantial amount of nudity and emphasis  
14 on human sexuality in their works, if -- to the extent  
15 that they are part of the mainstream culture, a politician  
16 would have -- in the broadest sense of the term, someone  
17 who is an advocate whether they are elected official or  
18 not -- has a need to distinguish between the good guys and  
19 the bad guys, and hard core pornography was a way to  
20 distinguish because the more serious hostiles to  
21 depictions of human sexuality want to still criticize  
22 Hollywood for undermining Western civilization by showing  
23 an unclothed body. But the primary source of the  
24 hostility was the -- what we know of the adult industry,  
25 the sort of stepchild of the rest of entertainment. And

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1 so that is how the term of hardcore and soft core evolved.  
2 Still want to condemn, but you want to make the  
3 particularly savage condemnation targeted. Does that  
4 answer the question?

5 So anyway, pornography is a term almost entirely  
6 without a definition. That is, if you go across the  
7 political --

8 Q Spectrum?

9 A Thank you. The political spectrum, you --  
10 pornography would include, on one extreme, a short skirt  
11 worn by a woman, not a very, very short skirt but  
12 revealing -- perhaps going above the knee and going all  
13 the way to pornography would be limited to explicit  
14 depictions of genitals.

15 Since the term is defined as the writing of  
16 prostitutes in its original form, pornography means  
17 nothing. If you go to a dictionary, the range of  
18 definitions that are found in dictionaries and  
19 encyclopedia -- they're all over the map. When you take a  
20 word that has such an ill-defined definition -- that is so  
21 ill-defined and then you crop it to be porn, you reduce  
22 its meaning substantially more. And then you use a phrase  
23 like hardcore that means nothing, it's just -- I mean,  
24 it's a reflection of what is sexually stimulating, and  
25 there is an infinite variety of what people find sexually

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1 stimulating. It's just why advertisers make so much  
2 money.

3 Q So does the adult industry include -- is your  
4 understanding of the phrase "adult industry" broader than  
5 what you think is referenced by the term "hardcore porn"  
6 or is it --

7 A It depends -- it depends on who's using the term  
8 "hardcore porn." Robert T. Chowders, the former head of  
9 the child exploitation and obscenity section believed that  
10 a bare breast was hardcore pornography. Most people  
11 wouldn't use that term to encompass that. So it depends  
12 on who's doing the talking. If you tell me what you mean  
13 by "hardcore pornography," then I will tell you whether or  
14 not that -- how that fits into the adult entertainment  
15 industry.

16 Q So you know what the adult entertainment industry  
17 is, or is that term equally broad?

18 A No. I would think the adult entertainment  
19 industry is made up of people who view themselves as being  
20 members of the adult entertainment industry. That is, for  
21 instance, for many years the -- I don't know what the  
22 title was. But Hugh Hefner's daughter, Christie, who ran  
23 what was known as the "empire" within the Playboy  
24 business, said they weren't pornographers. They weren't  
25 part of the adult industry. They were lifestyle.

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1 So for all intents and purposes, they weren't a  
2 member of the adult entertainment industry because by  
3 self-definition they weren't. Most consumers and critics  
4 of the industry regarded them as the adult entertainment  
5 industry because they didn't like them or did like them.  
6 When something doesn't have a real definition, then  
7 self-definition is what it is.

8 You know, in a more serious area, when Sammy  
9 Davis, Jr., announced that he was a Jew, there was a very,  
10 very broad and intense reaction to that solely on the  
11 grounds of his skin color. So by various traditions  
12 within various portions of the Jewish community he was or  
13 wasn't a Jew. Because some believe that, if your mother  
14 isn't Jewish, you're not Jewish. You can't really  
15 convert. Others say if you go through, you know, certain  
16 number of classes and make certain pledges, then you're a  
17 Jew. So a Jew is someone who thinks they're a Jew,  
18 self-defined. That's what being a member of the adult  
19 entertainment industry is.

20 Q Why do you think Hugh Hefner's -- did you say  
21 daughter? Why do you think Hugh Hefner's daughter  
22 redefines the empire as lifestyle?

23 A You would have to ask her. Presumably she  
24 thought it would make more money, but I have no idea why.

25 Q What is Free Speech Coalition's understanding of

9 (Pages 33 to 36)

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Page 37

1 the term adult industry? Is it the same as yours?

2 A I don't -- the Free Speech Coalition is not -- is  
3 a legal entity. It exists only because -- you know,  
4 whatever it was, somebody came with the idea of a  
5 corporation. So the Free Speech Coalition's views are  
6 either the collective set of the members, collective set  
7 of directors, collective set of members or staff. You  
8 know, I've been elected a lot. So presumably people's  
9 ideas are the same as mine, but I don't know. I'm sorry.  
10 I don't think that means anything to say what is the Free  
11 Speech Coalition's view on what adult entertainment is.  
12 It differs from person to person and probably director to  
13 director. What I said is likely a widely held view by  
14 members and directors, but I don't know.

15 Q So the Free Speech Coalition would not ever  
16 reject a member on the ground that that entity or person  
17 was not a part of the adult entertainment industry?

18 A Well, yes, that is probably correct. I mean,  
19 again I have an imagination. I probably could come up  
20 with something. But if the American Nazi party said they  
21 wanted to join the Free Speech Coalition, there would  
22 probably be some discussions on the board. On the other  
23 hand, if a packaging company or a communications  
24 company -- someone that manufacturers handsets -- wanted  
25 to join the Free Speech Coalition, we would welcome them

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1 as members if they paid their dues because they are  
2 providing support for the adult entertainment industry,  
3 and their rationale for joining would be because an  
4 important portion of their clientele was the adult  
5 entertainment industry.

6 Q That's what you would assume?

7 A Yes. I mean, it might be that a CEO of a company  
8 that has nothing to do with the entertainment industry  
9 believes passionately in adult entertainment, wants to  
10 avoid government intrusion. If the government wanted to  
11 join, we would welcome them. We have no secrets.

12 Q Do you happen to know what the dues are for a  
13 production company, for example?

14 A I would characterize myself as being not  
15 particularly well versed in that, but my belief is that  
16 it's \$3,000 a year. But we have it staged for size, and  
17 that's self-defined. So we ask someone are they large,  
18 medium, or small, and there's some gradation of the dues  
19 within that. But I think a media manufacturer, I believe,  
20 is \$3,000, but I wouldn't, you know, bet a dollar on me  
21 being accurate on that.

22 Q Okay. You are familiar with the Federal Statute  
23 18 U.S.C. 2257 which imposes age verification requirements  
24 on producers of films and photographs that include images  
25 of sexually explicit conduct; correct?

Page 39

1 A Yes.

2 Q And you first became familiar with these  
3 requirements before the current version of the statute and  
4 regulations?

5 A Yes.

6 Q How did you become familiar with those  
7 requirements?

8 A I'm a criminal defense attorney, and a portion of  
9 my clientele is affected by those -- by that set of laws  
10 and regulations; so it's part of my job. Just like I  
11 could tell you what the punishment is for driving under  
12 the influence for California under a variety of different  
13 circumstances.

14 Q Was your first inkling of the existence of these  
15 requirements from communication from a client?

16 A I don't remember. I'm -- probably another  
17 lawyer. I was aware of -- my recollection -- we're  
18 talking about 1988; so it's 25 years ago -- is dimmed over  
19 time, but it was probably another lawyer. It might have  
20 been at the First Amendment Lawyers Association. That's a  
21 highly likely possibility, but I was aware of it post  
22 passage but before it took effect.

23 Q That was very early on after its enactment?

24 A Yes. I was aware of it before the first  
25 regulations came out. They haven't gotten any better.

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1 Q And you are aware of it before the Free Speech  
2 Coalition even existed?

3 A Yes.

4 Q Do you think the -- or do you know whether the  
5 existence of the Free Speech Coalition has anything to do  
6 with those requirements?

7 MS. BAUMGARDNER: Objection. Go ahead and answer  
8 if you understand.

9 THE WITNESS: I don't understand the question.  
10 BY MS. WYER:

11 Q Do you think the enactment of those laws had  
12 anything to do with the formation of the Free Speech  
13 Coalition?

14 MS. BAUMGARDNER: You mean in particular?

15 MS. WYER: Yeah.

16 THE WITNESS: I don't know. I mean, I'm aware of  
17 what some people said was their motivation for forming yet  
18 another organization. As I said, there's been a series of  
19 them. But I also recall what was said when previous  
20 organizations were formed, and often the people who spoke  
21 were not representative of the people that ultimately  
22 animated the organization. I do not recall 2257 as being  
23 a specifically stated motivator, but insofar as the  
24 purpose of the formation of the organization was to  
25 address the trade's needs, 2257 was -- would certainly

10 (Pages 37 to 40)

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1 qualify as one of those.

2 BY MS. WYER:

3 Q When did Free Speech Coalition become aware that  
4 any of its members were following the requirements of 2257  
5 and implementing?

6 A Did you say when did the Free Speech Coalition  
7 become aware? That is, the Free Speech Coalition in that  
8 fashion because again I don't think of an organization  
9 having awareness. Directors have awareness because  
10 they're human beings, but I can answer it this way. It's  
11 unimaginable to me that any member of the initial board of  
12 directors was unaware of 2257 and its impact on the  
13 industry. It was incorporated in '91.

14 Q When, in your understanding, did Free Speech  
15 Coalition members begin implementing actions in order to  
16 comply with the requirements?

17 A My guess is that the majority of members of the  
18 Free Speech Coalition were attempting, with a greater or  
19 lesser degree of energy and success, to comply with the  
20 2257 at the time of the formation of the organization  
21 because the organization existed in 1991 -- was formed in  
22 1991, and people were making efforts at complying since  
23 1988.

24 Now, the injunctions and the rulings against 2257  
25 that went from '88 to the initial real enforceable date in

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1 July of '95 -- there was an enormous variation in how the  
2 businesses that were directly affected by 2257, how they  
3 responded to that. Some said wait to see if it ever goes  
4 into effect. Others attempted to comply immediately, but  
5 everyone was aware of it. I can't say everyone. Everyone  
6 I interacted with was aware of it. Again, it was part of  
7 my job to make sure they did.

8 Q Are you familiar with the term primary producer  
9 as used in the 2257 scheme?

10 A Yes. I think as used. I don't think it has a  
11 particularly meaningful distinction currently.

12 Q What do you mean?

13 A Well, Adam Walsh enactments attempted to  
14 eliminate the distinction between primary and secondary.

15 Q But you're aware that implementing regulations  
16 that have a definition of primary producer and a  
17 definition --

18 A Yes.

19 Q -- of secondary producer? Is Free Speech  
20 Coalition a primary producer?

21 A No.

22 Q Are Free Speech Coalition members primary  
23 producers?

24 A Some.

25 Q What kinds of activities are they engaged in that

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1 qualify them as primary producers?

2 A There are members who arrange for the recordation  
3 of sexually explicit and sexually simulated images. There  
4 are members who record those images, and there are members  
5 who put those images into the stream of commerce.

6 Q Could you put them in categories like magazines  
7 and things like that, or is there a way to categorize  
8 them?

9 A Sure. I could, but it doesn't make any  
10 difference. If I'm a toy manufacturer and I have an image  
11 on the packaging that is sexually explicit, I'm a primary  
12 producer. If there's a magazine and it has those images,  
13 then I'm a primary producer. If the image is a moving  
14 image in a tangible object, like DVD, VHS, or 8mm, I'm a  
15 primary producer. If it's created only and exists only  
16 in, you know, electronic form transmitted, for instance,  
17 through the Internet, then it's a primary producer.

18 Q Do you know how many Free Speech Coalition  
19 members are primary producers?

20 A I don't have a specific number but the vast  
21 majority are. The exceptions would be lawyers, and I mean  
22 I'm assuming that none of the lawyer members are primary  
23 producers. They're not mutually exclusive, but one would  
24 not expect that. I don't know of any lawyers that are  
25 primary producers. Talent agents probably are not primary

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1 producers. In the category of nonperformer individual  
2 members, I couldn't break down, but some of them are  
3 primary producers because they are individuals who are not  
4 otherwise -- who don't have a corporate existence but just  
5 are an individual producer. Someone who takes pictures,  
6 photographers -- they're primary producers, and they're  
7 members. One would not anticipate if you're the sound  
8 engineer or camera person or makeup artist that you're a  
9 primary producer not in that role, and they are members.  
10 The majority of performers are primary producers because  
11 of their Web site participation and social media. The  
12 majority of brick and mortar retailers are because they  
13 have Web sites. The majority of distributors have Web  
14 sites that makes them -- excuse me. Those are secondary  
15 producers. So I would assume that most retailers and  
16 distributors are secondary producers, not primary  
17 producers. So those would be the group that are not  
18 primary producer, but I think I said most performers are  
19 insofar as they commission imagery of themselves that  
20 appears on the Web site. They of course can be second  
21 producers that simply take images recorded by others and  
22 use on their Web sites.

23 Q So what percentage of Free Speech Coalition  
24 members do you think are primary producers?

25 A The quality of my estimate is so poor as to

11 (Pages 41 to 44)

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1 qualify as a guess.

2 Q We've already mentioned the term secondary  
3 producer, but you're familiar with that term as used in  
4 the regulations?

5 A Yes.

6 Q And Free Speech Coalition is not a secondary  
7 producer?

8 A That's correct.

9 Q And you've explained that, of the categories of  
10 Free Speech Coalition members, the activities that would  
11 qualify as secondary producers are conducted by retailers  
12 and distributors?

13 A Well, most. The only categories that would not  
14 be secondary producers -- because I think most  
15 manufacturers are primary and secondary. So the only ones  
16 that I could think of that would be secondary only would  
17 be distributors who have Web sites, retail outlets who  
18 have Web sites, and possibly a handful of artists, actors  
19 and actresses who don't commission anything for themselves  
20 and rely exclusively on materials created by others. I  
21 don't know what fraction. I would assume a minority, but  
22 some fraction of the performing artist community is  
23 exclusively secondary producer.

24 Q Do you think there are any categories of primary  
25 producers who are not also secondary producers?

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1 A Yeah. The independent contractor who creates  
2 movies to sell to others. They are not secondary.  
3 They're exclusively primary.

4 Q Or could that also include manufacturers?

5 A Most manufacturers. I can't say all because I  
6 don't know that, but my assumptions is that most, if not  
7 all, acquire product that was created by a separate  
8 primary producer. That would not qualify as a joint  
9 primary production because it could be multiple primary  
10 producers for one work of art. Recognizing that, my guess  
11 is that the large majority of primary producers are  
12 secondary producers as well. That is, they acquire  
13 finished product and distribute it, put it into the --  
14 distribute it, put it into the stream of commerce, and  
15 therefore are secondaries.

16 Q So you think that even small producers who are  
17 creating films are also secondary producers?

18 A It just all depends what you mean by "small."  
19 That's why I used the term "manufacturer." When I think  
20 of a producer is somebody who puts up the money to create,  
21 for instance, a movie or a scene. If that's all they do,  
22 essentially arrange for production, they would be unlikely  
23 to be secondary producers, but I wouldn't think of them as  
24 a manufacturer because, once they create that, they would  
25 turn around and sell that to someone else who bundles it

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1 in some fashion and puts it into the stream of commerce.

2 Q Did you say you would not think of them as  
3 manufacturers?

4 A I would not think of that person that I just  
5 described -- that person who is basically directing and  
6 funding a scene and selling it to a third party to put  
7 into the stream of commerce. I would not think of that  
8 person as manufacturer. The distinction initially  
9 manufacturer is someone who would take the image and put  
10 it on discs or videotape it and push it out into the  
11 world. That's what they were manufacturing.

12 Now, with the Internet that term is probably not  
13 particularly descriptive or accurate. But let's say I am  
14 a sort of stereotypical small producer that makes 20  
15 scenes a year. Every other week I'll shoot a 6- to  
16 15-minute scene. It is likely that, rather than  
17 distributing that through a Web site because that wouldn't  
18 generate substantial enough income to carry me through,  
19 it's much more convenient for me to sell that scene to  
20 someone else who has a large Web site that has the scenes  
21 of many, many different creators in it and just get income  
22 from them. In which case, that person would be a primary.  
23 They would never be buying other people's product.

24 Q Does Free Speech Coalition members upload  
25 material onto Web sites?

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1 A Yes.

2 Q Would such entities or individuals qualify as  
3 primary producers or secondary producers or both?

4 A Could be either or both.

5 Q Depending on whether the material they're  
6 uploading is material they've created?

7 A Yes.

8 Q Is there any type of activity, for example,  
9 creating digital films or creating videos or creating  
10 print images that is more common amongst Free Speech  
11 Coalition members than others?

12 A I would think that Free Speech Coalition fairly  
13 represents the market, and in the market more -- the  
14 majority of images are created electronically for  
15 electronic distribution than for tangible distribution.

16 Q Is the --

17 A Don't mind me.

18 Q Free Speech Coalition, for purposes of this case,  
19 has identified a certain number of entities or individuals  
20 as members; correct?

21 A I believe so.

22 Q Those include David Connors, Marie Levine, the  
23 Sinclair Institute or Townsend Enterprises; correct?

24 A Yes.

25 Q And those are Vivid Video Pictures, Wicked

12 (Pages 45 to 48)

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1 say it was not the primary factor that it shut down?

2 A There are -- I have been told by third parties --  
3 so not directly with the policy maker of companies that  
4 have shut down. And when it has been told to me why they  
5 shut down, the cost of compliance with 2257 and/or the  
6 fear of a criminal prosecution because of a record keeping  
7 error were significant factors, but I've not spoken to any  
8 of those people directly. People have said that such and  
9 such company went out of business and that has been said  
10 as being factors. But as I'm saying this, I'm trying to  
11 remember names, and I'm not sure that I can distinguish  
12 one from the other. So I'm loath to mention specific  
13 names.

14 Q Do you have a sense of how many producers you've  
15 heard of in that category?

16 A Probably a half dozen. That's the right  
17 magnitude. I have had a couple of people, maybe three,  
18 post Adam Walsh who consulted me with the intention of  
19 becoming a producer who told me, either at the end of the  
20 consultation or after, that ultimately they decided they  
21 just didn't want to do it, saying that 2257 was a specific  
22 factor. This is attorney-client privileged material; so I  
23 cannot disclose names. But I would say that two or  
24 three -- three is my best guess -- have post-Adam Walsh,  
25 chosen not to enter the business because of fear of

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1 criminal prosecution under 2257 or the burden.

2 Q Are you intending to testify regarding  
3 information that you got within the attorney-client  
4 relationship?

5 A I am not.

6 MS. BAUMGARDNER: Objection.

7 THE WITNESS: I am not intending to.

8 BY MS. WYER:

9 Q Okay. Just for the record, to the extent that  
10 you intend to testify to such information, we reserve the  
11 right to reserve to exclude it to the extent we have not  
12 been able to probe it further.

13 MS. BAUMGARDNER: And I'm objecting because  
14 you're inquiring about privileged areas, anyway. You're  
15 not entitled to a response.

16 BY MS. WYER:

17 Q In regard to Dave Connors, what is your basis for  
18 your understanding regarding his going out of business and  
19 the reasons for that?

20 A I believe he has said it -- I believe I've read  
21 it in a trade publication.

22 Q Do you recall where?

23 A No.

24 Q You have not spoken with him about it?

25 A I have an attorney-client relationship with Dave;

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1 so I cannot answer that question.

2 Q Do Free Speech Coalition use young-looking  
3 performers in the images of sexually explicit conduct that  
4 they produce? And by "sexually explicit conduct," I  
5 mean -- can we agree that I mean activities that would be  
6 subject to the 2257 requirements?

7 A You want -- I don't need a definition of that  
8 term. I need the definition of the term "young looking."  
9 I'm 56 years old. Most people are young looking.

10 Q What do you consider to be young looking?

11 A I -- I don't know what that term means. Younger  
12 than what?

13 Q Well, I guess we can just go to some examples.

14 A I'm going to need a reference. Younger than me?  
15 Younger than something. Right. Because "young" doesn't  
16 mean anything. I have a five-year-old son. He is young.  
17 I have not seen a commercial production of sexually  
18 explicit material that depicts anyone that could be  
19 mistaken for my son.

20 Q For a five-year-old?

21 A Correct.

22 Q In your opinion, what does the term "mature"  
23 mean?

24 MS. BAUMGARDNER: Objection.

25 THE WITNESS: Should I answer?

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1 MS. BAUMGARDNER: Yeah. Go ahead. In terms of  
2 what? If you understand what she's asking.

3 THE WITNESS: Mature means to me to have an  
4 appreciation of the complexity of the world that we  
5 participate in and understanding individual  
6 responsibility.

7 BY MS. WYER:

8 Q Is it your belief that the images produced by  
9 Free Speech Coalition members contain -- are exclusively  
10 of mature-looking individuals?

11 A Depending on what you mean by the term "mature,"  
12 yes or maybe no. But I don't know what you mean by the  
13 term "mature."

14 Q Do you have an understanding of the term "old"?

15 A Without a context, it doesn't mean anything.  
16 Again, I mean at five years old, my son does not  
17 distinguish between an 11-year-old and 56-year-old. We're  
18 all old. What do you mean?

19 Q Do you think that you can determine a person's  
20 age by their visual appearance?

21 A No, I do not.

22 Q I just saw a picture of Rachel -- a video of  
23 Rachel Robinson, Jackie Robinson's widow.

24 MS. BAUMGARDNER: Oh.

25 THE WITNESS: She is 85.

22 (Pages 85 to 88)

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1 Q What is the decision making process when Free  
2 Speech Coalition is considering filing a lawsuit?

3 A Importance or perhaps you can say relevance to  
4 the national impact of the -- whatever it is that we would  
5 be challenging in the litigation, the cost of litigation,  
6 and whether there are more suitable plaintiffs.

7 Q Aside from Free Speech Coalition?

8 A Correct.

9 Q Who makes the decision?

10 A Board of directors.

11 Q Does it -- is there a vote, or is it a consensus?

12 A Could be either.

13 Q So is that the process that was -- that occurred  
14 in this case?

15 A Yes.

16 Q Was there a vote?

17 A Probably. I don't remember.

18 Q At what point would it be decided in terms of,  
19 like, how far in advance before filing?

20 MS. BAUMGARDNER: Objection.

21 THE WITNESS: That depends. I mean --

22 MS. BAUMGARDNER: Kathy, I don't mean to  
23 interrupt, but I can use a bite to eat when it is a good  
24 stopping point. I think Mr. Douglas probably could too,  
25 if not the court reporter. I know you're an iron woman;

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1 so --

2 MS. WYER: Maybe in 15 minutes.

3 MS. BAUMGARDNER: That's fine.

4 MS. WYER: Maybe less. This section might not  
5 take long.

6 BY MS. WYER:

7 Q You've been involved in prior litigation  
8 involving 2257; correct?

9 A Yes.

10 Q What cases were you involved in?

11 A The Free Speech Coalition versus -- trying to  
12 remember.

13 MS. BAUMGARDNER: Gonzales, I think.

14 THE WITNESS: I think it started with Ashcroft  
15 and Gonzales came in afterwards. Maybe not. I don't  
16 remember. In any case, it was a challenge to the -- when  
17 the -- when the set of regulations in 2005 came out with  
18 the revival of secondary producers, we filed a lawsuit in  
19 Denver.

20 BY MS. WYER:

21 Q That was the -- so that was district of Colorado?

22 A Yes. At one point it was FCC vs. Gonzales. It  
23 may have been the entire time.

24 Q During that case, there was a point where there  
25 was an agreement that the government would not take

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1 enforcement action against Free Speech Coalition members;  
2 correct?

3 A Yes.

4 Q There was a cutoff date by which anyone who was a  
5 member by that date would be covered by that agreement;  
6 correct?

7 A Yes.

8 Q That cutoff date was 2:00 p.m. June 25th, 2005?

9 A I have no independent recollection, but that  
10 sounds correct.

11 Q Do you recall how many new members Free Speech  
12 Coalition -- joined Free Speech Coalition as of -- during  
13 the time period between the agreement and the cutoff date?

14 A We were utterly completely unprepared and  
15 overwhelmed. It was probably 2,000. That's the right  
16 magnitude. It could have been 1,200. It could have been  
17 2,000, but 2,000, as I said, is the correct magnitude.

18 Q That time period in which these members joined  
19 was?

20 A Like, ten days. It was a disaster.

21 Q But today you mentioned that the current  
22 membership of Free Speech Coalition is 950, did you say?

23 A I think I said 800, but again that's the right  
24 magnitude.

25 Q So do you know -- do you have any sense of how

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1 long those new members remained members? Obviously, not  
2 all of them remained members.

3 A There were a number of problems. We did not have  
4 any mechanism in place to receive the number of calls that  
5 we were getting, and so we made a number of fatal errors  
6 which resulted in the lack of renewals. We hired a phone  
7 service to take the orders, and they might be quite fine  
8 if you're going to be ordering pens or garbage cans from  
9 them, but they failed to get almost all of the necessary  
10 information. That is, they got names incorrectly. They  
11 got phone numbers incorrectly. The only thing they got  
12 were credit card numbers. That's the only thing they  
13 cared about. So we had hundreds of companies that we had  
14 listed as members whom we could not contact. And when we  
15 sent out renewal notices, that's when we found out that we  
16 didn't have addresses or we had partial addresses or we  
17 had incorrect addresses. So there was a substantial  
18 number that we simply had no means of contacting.

19 The other issue was that a number of companies no  
20 longer felt that there was the urgency of joining because  
21 they formed the opinion they were getting the benefit,  
22 which is to say, lack of enforcement whether they were  
23 members or not.

24 And then in addition, that occurred at a  
25 relatively dynamic time in the evolution of the adult

25 (Pages 97 to 100)

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1 were worthless to you.

2 Q What was the prior understanding based on?

3 A The five-year washout? It's in the regs, the old  
4 regs.

5 Q That was amended in this proposed --

6 A In the proposed regs, they said that you could  
7 sell to a secondary only if you provided them with the  
8 records. But if you didn't need to maintain those  
9 records, then those records would lawfully been disposed  
10 of. So you're creating an obligation to maintain records  
11 in order to make material commercially viable that the  
12 government had previously said you didn't need to  
13 maintain. That's a problem.

14 Q So there was an assumption, based on the  
15 indication in the prior version of the rules, that records  
16 need only be maintained for five years. It was an  
17 assumption that meant that, if one was going to engage in  
18 secondary protection of that same material, somehow that  
19 material would be exempt from the requirements?

20 A There was no lawful provision for secondary  
21 producers. Right. From the date of the Sundance  
22 opinion -- apart from the fact that just on its face,  
23 secondary producer was a creation entirely on some small  
24 section of the attorney general's office. There was  
25 nothing that suggested that anyone other than a producer,

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1 a person who arranged for or did the recording of the  
2 material or paid for the performers was a record keeper.  
3 That was it. That was the entire universe of record  
4 keeper. The attorney general said oh, it's not just --  
5 it's not just the driver of the car who's drunk. If any  
6 of the passengers are in the car, that's a crime too.  
7 That's not what the statute on drunk driving says. That  
8 is precisely analogous to what happened here. So ultra  
9 vires regulations were created that everybody, except a  
10 handful of people in the justice department, recognized  
11 that could not be lawful and effective.

12 Then Sundance comes out and says, yeah, you're  
13 right. This is ultra vires. This is indefensible. The  
14 government did not appeal, and there was no attempt to do  
15 anything to communicate that this was not the position of  
16 the Justice Department until the 2007 regs -- 2005 regs  
17 come out. So from the date of Sundance -- which I don't  
18 recall what it is, and it may be in here somewhere.

19 MS. BAUMGARDNER: I think it's '98. I'm not  
20 sure.

21 THE WITNESS: So from 1998 to 2005, there were no  
22 secondary producers. That was entirely an artificial  
23 creation of the attorney general and no one on earth was  
24 complying with it, nor was there any rational reason to  
25 comply with it because, besides the fact that it was

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1 self-evident, there was a published unappealed opinion  
2 saying so.

3 Then in 2005 it's ha, ha, ha. You cannot sell  
4 your material to another seller without providing them the  
5 records that, under the existing law, you could destroy.  
6 Therein lies the problem.

7 BY MS. WYER:

8 Q Was Sundance a Supreme Court opinion?

9 A Tenth Circuit.

10 Q So the secondary producer requirements don't  
11 apply in California; correct?

12 A No. They were unconstitutional at the time ab  
13 initio. If tomorrow government were to say based on  
14 legislation but on a regulation generated by executives  
15 that it was illegal to be a passenger in a car with .08  
16 that would be void ab initio. There is nothing about that  
17 that's enforceable. There's nothing about that that is  
18 law. That is dictatorship. That is an arbitrary rule  
19 announced inconsistent with due process. That's what  
20 Sundance said. That's what was the -- as a result of  
21 Ashcroft vs. Free Speech Coalition, and the government did  
22 nothing during that period to suggest or imply that that  
23 was not correct.

24 There is, as we found out in Denver, a cost to  
25 not aggressively consistently challenge unconstitutional

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1 regulation because government said you sat on your hands  
2 all this time. There's a flip side to that too when the  
3 government is told by a Court of Appeal that they had done  
4 something that is patently indefensibly beyond its  
5 authority, and the government does nothing inconsistent  
6 with that for seven years and then says ha, ha, ha. All  
7 you guys you have to do what we did nothing to convey that  
8 you had to do after a Court of Appeal said -- stated the  
9 obvious. Yeah. That's a huge problem.

10 Q Okay. I think I understand that position.

11 Going on to No. 2 in the --

12 A Yes.

13 MS. BAUMGARDNER: Exhibit 7?

14 BY MS. WYER:

15 Q 2 in Exhibit 7 on page 4.

16 A 4. Yeah.

17 Q The definition of producer --

18 A Is unwarranted by the statute and burdens too  
19 many people.

20 Q Was this comment adopted?

21 A Not going to jump the gun this time. I'm going  
22 to look at it. Do you know -- is there a place in the  
23 final regs that you believe this is referenced?

24 Q On page 777439.

25 A 439?

35 (Pages 137 to 140)

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1 that you would attribute to 2257?

2 A That's exactly correct. The acquisition of a  
3 reliable form of identification government issued ID not  
4 necessarily precisely those prescribed by 2257. For  
5 instance, if a performer provided me -- if I was a  
6 producer -- with a passport from Canada, I would find that  
7 to be perfectly reliable and be comfortable establishing  
8 that identity and age, but in any case government issued  
9 ID is proof that the person is of the age of majority.  
10 That is not a burden. It's everything else. And since  
11 everything else, as I indicated and overenunciated, is  
12 unnecessary in order to achieve the goals of legislation,  
13 that's why it's such an enormous burden. Recognize that,  
14 if a production company puts into the stream of commerce  
15 material that has a minor in it, if they are in compliance  
16 with 2257 and their good faith is established therefore  
17 they don't have to worry about doing 15 years mandatory  
18 minimum for producing child pornography. The cost of  
19 having a minor get into the system, having to recall that  
20 material is overwhelming and generally catastrophic.

21 Q Can you identify other requirements that apply to  
22 Free Speech Coalition, other legal requirements under  
23 which they operate --

24 A Sure.

25 Q -- that relate to age verification?

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1 A Then -- sorry. That fooled me. Repeat the  
2 question.

3 Q Can you identify any other legal requirements  
4 under which Free Speech Coalition members operate that  
5 relate to age verification?

6 A Yes. I cannot imagine any member of the Free  
7 Speech Coalition who distributes an image of a performer  
8 not intending to have a model release on file. And since  
9 a model release is a contract and a contract with a minor  
10 is not enforceable, the producer has a civil legal  
11 obligation to be a functioning profitable business to  
12 verify that the person with whom they are contracting is  
13 of age.

14 Q And the result if a producer did not do that  
15 would be that the rights that they would have required  
16 through the release would not be valid; correct?

17 A Right. They would have dual obligations to  
18 recall and destroy the product one criminal one civil.

19 Q What would the criminal obligation be?

20 A Violation of child pornography laws. If I sign a  
21 contract with a minor and distribute images of that minor  
22 and it turns out that person is a minor unbeknownst to me,  
23 once I find out, I have the affirmative obligation to stop  
24 distributing the material, and to the extent that I  
25 previously distributed material, see to its lawful

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1 destruction.

2 Q So you have identified child pornography criminal  
3 laws and the requirement that contracts must be signed by  
4 individuals who are either of legal age or have been  
5 otherwise adjudged competent to enter into contracts as --

6 A Correct.

7 Q -- to age-related contracts --

8 A Correct.

9 Q -- applicable to members? Are there any others?

10 A No. Nothing I can think of. Well, let's see. I  
11 think -- I'm not familiar with state laws on hiring a  
12 minor; so I don't know if I were to hire a 16-year-old or  
13 17-year-old for the purpose of, you know, filing documents  
14 in my office if I have some special obligation once they  
15 are a minor. I don't know that. It may well be there are  
16 others. I'm not familiar with that. The ones I'm aware  
17 of are criminal and civil side. So if one fantasized a  
18 world where there are no child pornography laws, but I  
19 have inadvertently hired a minor and distributed the  
20 material in order to minimize my civil liability once the  
21 minor sues me or once I'm notified and recognize I might  
22 be sued, I would have a similar obligation to, A, stop  
23 distributing the material and recall the material as  
24 quickly as possible in order to minimize my civil  
25 liability. Has an extremely costly effort, costly not

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1 only in terms of my out-of-pocket loss and expense for  
2 doing that but also the loss of good will is profound.

3 Q And the impact that would have would be a  
4 professional and financial impact to the producer?

5 A Yes.

6 Q In looking at Interrogatory 9, I wanted to note  
7 in the response that this is a question that asked for the  
8 number of individuals appearing in the Free Speech  
9 Coalition members who are in particular age ranges. And  
10 the -- in the response it stated in all likelihood there  
11 are more than 1000 depictions for each category except  
12 perhaps for 6, which is the category of over 65.

13 A Right. Since Dave Connors may have well been  
14 close in a thousand by himself over the age of 65.  
15 Certainly he has done hundreds. May be that that 65 --  
16 over 65 does meet the thousand.

17 Q That's based on an understanding of -- if the  
18 question had asked instead for numbers of individual  
19 performers?

20 A There are likely scores if not hundreds of  
21 performers over the age of 65 who have engaged in sexually  
22 explicit conduct. I don't know if they are all members.

23 MS. BAUMGARDNER: I want to clarify. The  
24 interrogatory asked for total number of depictions.

25 MS. WYER: I was saying if performers.

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THE WITNESS: That is, there is -- there are all of the sort of subcategories that are created for marketing purposes so there is a subcategory of granny porn. There is surely scores of people that perform under granny porn, and there are likely hundreds. And if you were to tell me there are thousands, that is not an unlikely number. Now what percentage of those productions are created or districted by our members? I don't know. But you're talking about a measurable and significant portion of the fraction of the material that is available both tangible and online.

BY MS. WYER:

Q But even under the interrogatories where -- your answer suggests that the number of individuals in the other -- the number of depictions in the other age ranges would be more?

MS. BAUMGARDNER: Objection. More than what?

BY MS. WYER:

Q More than the number in the Category 6?

A We specifically say -- without waiving the objection -- there are substantially -- there are more than 1,000 depictions for each category.

Q Except perhaps for six.

A Right. I'm not sure that exception is correct, but we were extraordinarily cautious.

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Q Does that answer reflect your understanding that there are likely more in the other age ranges than in the over 65 age range?

A Yes. It reflects -- you said understanding. That's a strong guess -- estimate.

Q Do you have any way of knowing the ages of performers that appear in depictions produced by Free Speech Coalition members?

A Not specifically, no. Well, yeah. They're all over 18, 100 percent.

Q Do you -- does Free Speech Coalition engage in any monitoring of its members' production activities in order to evaluate whether they are in fact using only performers 18 or over?

A No.

Q Is there any contract between Free Speech Coalition and its members that requires that?

A No. There is a best practices. That's the closest thing that comes to that, and I don't know off the top of my head if best practices include specifically of age, but it says comply with applicable laws. And I don't believe that you could find a single knowledgeable person who would disagree with the statement that there is no knowing production of sexually explicit material with someone under age by, A, members of the Free Speech

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Coalition or, B, the substantially larger class of commercial producers or distributors of adult pornography. Even the most committed critics of the industry do not suggest that commercial child pornography has a relationship, a commercial relationship with the adult entertainment industry. No one believes that.

Q Is that your understanding yourself?

A I'm sorry? Is it my understanding? There's no commercial relationship between the production of child pornography and production of adult entertainment. Yes.

Q Going to Interrogatory 12, this lists various Web sites. Were you involved in compiling this list of Web sites?

A I don't think so. I may. I'm not sure whether I mentioned any of these or not. I'm familiar with a fraction of these, and I don't remember whether I proposed them or not. Let's assume no.

Q That was my only question on that. Have you -- are you aware of any -- are you aware that in response to these interrogatories there was also -- this was -- let's give you 10.

MS. WYER: Let this be marked as Exhibit 10.

This is the second set of interrogatories responses.

(Defendant's Exhibit 10 was marked for identification and is annexed hereto.)

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THE WITNESS: Yes.

BY MS. WYER:

Q From Free Speech Coalition; correct?

A Yes.

Q And in response to Interrogatory 23 there are various categories on subsections of that, and I want you to look at subsections H and I on page 10 which asks for examples of sexually explicit visual depictions in a documentary on rape and sexually explicit visual depictions in a documentary on sexual abuse in war-torn countries.

A That's on page 10?

MS. BAUMGARDNER: Mine is misstapled. Let's see if yours may have too. Yours is correct.

THE WITNESS: And your question is?

BY MS. WYER:

Q Whether you are familiar with any of the examples provided on page 12 in response to subsection H and I?

A I have not seen but I am aware of abused innocents. I heard it discussed on an MPR program. And likewise I'm pretty sure that what I was familiar with is inside the anonymous hacking file of the Steubenville rape crew.

Q Are you aware whether those depictions -- whether those works include images that would be -- that in your

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1 the Court about that.

2 THE REPORTER: Would you like copy?

3 MS. BAUMGARDNER: I'll let you know.

4 (Deposition concluded at 4:21 p.m.)

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1 REPORTER'S CERTIFICATE

2 I, ELIDA REYES, Certified Shorthand Reporter in  
3 and for the State of California, License No. 13547, hereby  
4 certify that the deponent was by me first duly sworn and  
5 the foregoing testimony was reported by me and was  
6 thereafter transcribed with computed-aided transcription;  
7 that the foregoing is a full, complete, and true record of  
8 said proceedings.

9 I further certify that I am not of counsel or  
10 attorney for either or any of the parties in the foregoing  
11 proceedings and caption named or in any way interested in  
12 the outcome of the cause in said caption.

13 The dismantling, unsealing, or unbinding of the  
14 original transcript will render the reporter's certificate  
15 null and void.

16 In witness whereof, I have hereunto set my hand  
17 this day: \_\_\_\_\_, 2013.

18 [ ] Reading and Signing was requested.

19 [ ] Reading and Signing was waived.

20 [ X ] Reading and Signing was not requested.

21 \_\_\_\_\_  
22 Elida Reyes, CSR No. 13547  
23  
24  
25

Page 206

1 I declare under penalty of perjury under the laws of  
2 the State of California that the foregoing is true and  
3 correct.

4 Executed on \_\_\_\_\_, 2013, at.

5 \_\_\_\_\_  
6 (city) (state)

7  
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10 \_\_\_\_\_  
11 JEFFREY J. DOUGLAS  
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2  
3 Tuesday, April 9, 2013

4 WITNESS

EXAMINATION

6 JEFFREY J. DOUGLAS

7 (By KATHRYN L. WYER) 3

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***In The Matter Of:***

***Free Speech***

***v.***

***The Honorable Eric H. Holder, Jr.***

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***Thomas Hymes VOL I***

***April 8, 2013***

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***Word Index Included with this Condensed Transcript.***

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1 BY MS. WYER:

2 Q And when you answer, please answer verbally  
3 so that the court reporter can record your response,  
4 because she can't understand nods.

5 A Okay.

6 Q What did you do to prepare for the deposition  
7 today? Anything?

8 A We met yesterday for a few hours, and that's  
9 about it. I haven't really done much other  
10 preparation for it. I looked over my -- I had a copy  
11 of my first -- the answer to my first interrogatories.  
12 I went over that briefly, and that's about it.

13 Q Is that the only document that you looked  
14 at?

15 A That is the only document that I looked at.

16 Q Okay.

17 A I looked at a couple -- I also looked at a  
18 couple of old news stories on avn.com just to refresh  
19 my memory, and that's it.

20 Q About the litigation?

21 A Well, about -- in fact, the meeting I had  
22 talked to you about when we went to the -- I've  
23 forgotten when it was. So I wanted to refresh my  
24 memory. We went to the meeting with the FBI in  
25 Washington DC in 2007. Mark Kerns had written an

Page 6

1 article about it, and I reread that last night to just  
2 refresh my memory.

3 Q Let's just start with your background. What  
4 kind of education background do you have?

5 A I have two years of college, and I'm also an  
6 actor. My wife is an actor. So I've studied a lot of  
7 acting-type classes in New York when I was younger.  
8 But two years of college in Boston plus some other  
9 matriculated -- various matriculated courses over the  
10 years. So that's the extent of my higher education.  
11 Then I graduated obviously high school in New York  
12 City.

13 Q Did you have a major?

14 A It was English, yeah. Creative writing, that  
15 type of stuff.

16 Q Okay. How did you become involved in the  
17 adult industry?

18 A Well, I was introduced to it by an actor  
19 friend who was in my theater company. She was writing  
20 for AVN at the time. She asked me if I wanted to get  
21 some writing work, which I did. I began part time  
22 just reviewing movies, which I didn't particularly  
23 like, and then they started this magazine called AVN  
24 Online and they hired me as a staff writer. And I  
25 eventually became the editor and chief, and that all

Page 7

1 began in 1999. And I've been covering the industry  
2 ever since.

3 Q So when you first got the job as a staff  
4 writer, that was 1999?

5 A That was -- it was -- I believe it was still  
6 in 1999, yes.

7 Q So were you --

8 A I was hired part time to just review movies  
9 and then they hired me full time at AVN to be a staff  
10 writer for this new magazine, AVN Online, and that was  
11 all -- that all began in 1999.

12 Q Okay. It all happened within the year that  
13 you --

14 A Well, I didn't become editor in chief right  
15 away. That was about three years later, but I was a  
16 staff writer for a couple of years.

17 Q Okay. And was that here in California?

18 A Yes, in Chatsworth.

19 Q Okay.

20 A Yes.

21 Q So when did you come to California?

22 A I'm from New York. I moved out here in 1979  
23 actually, so I've been out here since 1979.

24 Q Okay.

25 A Uh-huh.

Page 8

1 Q And what were you doing between 1979 -- what  
2 were you doing between 1979 and when you started with  
3 AVN?

4 A Working, living, a lot of theater, a lot of  
5 acting type of work, improv group, that type of  
6 stuff.

7 Q Did you come to California to be --

8 A Not really.

9 MS. BAUMGARDNER: Let her finish.

10 THE DEPONENT: I thought she finished. To be  
11 an actor? Not really. I'd always done acting. I  
12 kind of came out here; my brother was living here; so  
13 I just stayed here and then just continued doing the  
14 things that I had always been doing. But I didn't  
15 specifically move out here to be an actor like  
16 everyone else does.

17 BY MS. WYER:

18 Q When you started with AVN Magazine, was that  
19 an online magazine?

20 A No. AVN Online was a print magazine, so they  
21 began a print magazine back then. It's no longer  
22 being published, but it was -- it was AVN Online.  
23 They started a magazine to cover the online industry  
24 separate from AVN Magazine, which covered the video  
25 side of the industry. So there was a magazine

2 (Pages 5 to 8)

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1 dedicated to covering the adult online industry, and  
2 that's the one I wrote for.

3 Q Okay. And so for three years you were a  
4 staff writer?

5 A Well, I don't remember exactly when I became  
6 editor and chief. It was about two or three years  
7 that I was a staff writer. Then I became the editor  
8 and chief for another three years or so, and then I  
9 left AVN in 2004.

10 Q What kind of stuff do you do when you're  
11 editor and chief?

12 A Everything. You're responsible -- I was  
13 responsible for assigning all the articles. I had a  
14 staff and overseeing the production of the magazine,  
15 the content of the magazine, the budget of the  
16 magazine, so from A to Z. I was in control of that  
17 magazine.

18 Q The advertising?

19 A There was obviously a sales department, so  
20 sales would do -- you know, sell the advertising. I  
21 would work with them, but I was editorial.

22 Q Okay. And during this whole period from 1999  
23 to 2004, AVN Online was a print --

24 A Yes.

25 Q -- magazine?

Page 10

1 A Yes, a print publication.

2 Q So you were working exclusively with --

3 A No. Because we also had avnonline.com, so I  
4 was also charged -- I also had, at that time, one  
5 staff member who was dedicated to posting stories on  
6 avn.com. So there was an online component to it as  
7 well, and, of course, I oversaw that as well.

8 Q And in 2004 what did you do?

9 A I left AVN. I resigned from AVN, and shortly  
10 thereafter I was hired to be the communications  
11 director for the Free Speech Coalition.

12 Q Why did you leave AVN?

13 A Because -- well, it's kind of -- not  
14 personal. It was business stuff. I was a little  
15 upset about -- it had to do with internal politics  
16 frankly. And so there was a sort of direction -- they  
17 hired a new publisher and he was taking the magazine  
18 in a direction that I was not very comfortable with.  
19 So I left for that reason. I mean it took me a year  
20 to leave because I wanted to be in good graces with  
21 everyone there and with the owners, who I'm very fond  
22 of, but that's why I left. I left because it was  
23 being taken in a direction that I was uncomfortable  
24 with, so I resigned.

25 And I didn't really know what I was going to

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1 do after that. And then Michelle Freridge, who was  
2 the executive director of Free Speech Coalition at the  
3 time, called me and offered me this other position,  
4 which I took.

5 Q What do you mean when you say AVN was going  
6 in a direction you weren't comfortable with?

7 A Well, I'm a -- I have strong journalistic  
8 ethics and I don't like to -- I mean there was -- you  
9 know, it's a trade magazine so it's -- you have to  
10 fight all the time to hold the line on your editorial  
11 integrity, and not everyone necessarily shares those.

12 They just hired a publisher who had kind of a  
13 different philosophy and was sort of intruding into  
14 editorial areas, and I wasn't really comfortable with  
15 that and I couldn't stop it, and I was concerned about  
16 the trajectory of where they wanted to take that  
17 magazine and I didn't really want to be a part of  
18 that. It was just too -- it wasn't pure enough for  
19 me, and I thought it was really important that we  
20 maintain our editorial integrity there and that was my  
21 concern. So I take those things really seriously.

22 Q Let's back up. So what is AVN? What does it  
23 mean to be a trade magazine?

24 A A trade magazine covers a particular  
25 industry. So AVN magazine is, you know, a -- it

Page 12

1 covers -- that's what a trade publication is. It  
2 covers an industry.

3 And so for AVN, it covers the adult  
4 entertainment industry, which is vast. So depending  
5 on its resources, it will have different publications  
6 that target different sectors of that industry.

7 At one time we had AVN Video, AVN Magazine,  
8 AVN Online, online, and then there was an AVN Novelty  
9 separate publication which covered the novelty sector.  
10 Those have since, because of, you know, the market and  
11 because of tough times, been combined into one  
12 magazine now. There is no longer a separate novelty  
13 magazine or an online magazine. They've all gone back  
14 into AVN Magazine.

15 So depending on your resources, you have  
16 either different ones or one, but they all cover --  
17 they all cover a particular industry. They're not  
18 consumer magazines. In other words, the readership  
19 are members of the industry and people who are  
20 interested in the industry as opposed to consumers, so  
21 these are not consumer publications. They're trade  
22 publications.

23 Q So what did you do for Free Speech  
24 Coalition?

25 A I wrote all of the press releases. I

3 (Pages 9 to 12)

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1 communicated with all the media. I arranged  
2 interviews and anything related to a communications  
3 director type of position. Basically it was -- I  
4 would do -- also I did -- at that time Michelle was  
5 not so comfortable doing media interviews so I did all  
6 of them. Now Diane is very comfortable in that role  
7 so she tends to do them. They don't have a de facto  
8 communications director right now.

9 Q When you say "Diane," do you mean --

10 A Diane Duke. Diane Duke, current executive  
11 director. But at that time, I would do all of the  
12 interviews. I did hundreds of the mainstream  
13 interviews about all of these same issues, .xxx, 2257,  
14 whatever issues were coming up, whatever the media  
15 needed to talk about. And then also I also wrote  
16 articles and press releases and that type of stuff.

17 Q When you wrote articles, were they articles  
18 as a journalist or how does that work in being --

19 A No. They would be more in -- they wouldn't  
20 be a journalist because I wasn't a journalist at that  
21 time. They would be more advocate oriented. They  
22 would be advocating or communicating the positions of  
23 the Free Speech Coalition as I was -- at whatever they  
24 were. I was not -- there was a board of directors.  
25 There was an executive director. So I was

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1 communicating whatever the positions of the Free  
2 Speech Coalition were through the oral and verbally  
3 and written word to whomever the audience was. Mostly  
4 if it was written it would be to the industry, writing  
5 something for AVN or for XBIZ or for YNOT, Y-N-O-T.

6 Q So AVN publishes articles that it gets from  
7 Free Speech Coalition?

8 A Yeah. I mean occasionally that will happen.  
9 Diane will also write columns. She'll write -- I  
10 think she writes a regular column for XBIZ. So, you  
11 know, they're not published as journalism pieces.  
12 They're published as -- those particular things would  
13 be published as, you know, an advocacy piece or an  
14 opinion piece or whatever it would be from the Free  
15 Speech Coalition.

16 Q And how long were you in that position?

17 A Just about a year and a half actually. Only  
18 about a year and a half.

19 Q And why was that?

20 A I left because money -- there were financial  
21 issues at Free Speech Coalition. And the reason for  
22 that is actually beyond -- I don't -- I can't speak to  
23 that since I was not in charge of any finances. But  
24 there were some financial issues. I was unsure at  
25 that point in time that I was going to continue to get

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1 paid, and I had a young son, a family to support, a  
2 little baby at home, so I was -- I was between a rock  
3 and a hard place at that time.

4 I loved my job and I was not finished with my  
5 job. But I found myself in a position where I wasn't  
6 sure that I was going to be able to -- that they were  
7 going to have the money to pay me at that point in  
8 time. It's very specific to that point in time.

9 And the owner of XBIZ approached me at a  
10 trade show just by coincidence and offered me the job  
11 of publisher of XBIZ at that same period. And I  
12 thought long and hard and I took the position. So I  
13 went from -- right from Free Speech Coalition to  
14 XBIZ.

15 Q And what year was that? Do you know?

16 A That was -- oh, boy. It was probably 2006.  
17 The exact day -- I didn't look that up. I was just  
18 looking around for dates or something. But it was --  
19 actually the end of 2006, yes. Actually I can tell  
20 you for a fact. It was 2006 when I went to XBIZ. I  
21 don't remember the month.

22 Q And what is XBIZ?

23 A XBIZ is a competitor to AVN, so it's another  
24 media company that does basically the same thing,  
25 magazines, online, trade shows type of stuff.

Page 16

1 Q Trade shows?

2 A Uh-huh.

3 Q What is that?

4 A A trade show? A trade show is a live event  
5 that is produced by, in this case, these same media  
6 entities where industry professionals come to network  
7 and, you know, and do business and see -- go to  
8 seminars and that type of stuff. So both AVN and XBIZ  
9 produce shows now.

10 Q Is it a place where things are sold?

11 A At the AVN I believe there -- huh. You know,  
12 that's a very good question. I believe there are some  
13 sales at trade show booths. My role for the trade  
14 shows is to coordinate all of the seminars. I  
15 currently do that for AVN and I did it for XBIZ back  
16 then. So I don't really involve myself with the show  
17 floor stuff. I do believe some sales are done there.

18 I think people actually do business there,  
19 because there's consumer elements as well to the AVN  
20 show. I don't believe the -- like there's fan days at  
21 AVN. It's like the January shows. They're huge the  
22 whole week in Las Vegas, so there's trade only days  
23 and then there's fan days when the fans come in to see  
24 their stars, and there might be some like sales  
25 components, like some people might sell their DVDs on

4 (Pages 13 to 16)

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1 the show floor or something like that.

2 Q So you're a publisher?

3 A At XBIZ.

4 Q And what did that involve?

5 A Truth be told, it was a title that didn't  
6 have -- it was -- I was a publisher in name only. In  
7 fact, I went to the owner of XBIZ after about a couple  
8 of months and I said, You know, I'm not a real  
9 publisher. A publisher has a budget. They have  
10 information. They have data. They have all the  
11 things that they need to do a publisher -- to be a  
12 publisher. I had none of that.

13 So, in fact, I was hired, as happened before,  
14 so he could hire me because I was a well-known entity  
15 and he could hire me as the publisher without giving  
16 me the tools I needed, which was why I didn't stay at  
17 AVN. I was there only for about maybe a year and a  
18 half.

19 MS. BAUMGARDNER: You meant XBIZ.

20 THE DEPONENT: XBIZ. I'm so sorry. I was  
21 there only for about a year and a half and then left  
22 there as well. But I was -- a publisher normally  
23 oversees -- hires people, oversees editorial, does  
24 business development, has sort of overall control over  
25 the editorial side of the business, which would also

Page 18

1 include sales, you know, because the publisher would  
2 be responsible for that side of the business. And so  
3 ideally that's what I would have been doing.

4 In this particular circumstance, it didn't  
5 quite work out that way, but that's what a publisher  
6 normally does. I was a publisher in name only and so  
7 I was just sort of overseeing editorial and then I did  
8 all the seminars. It was during that time period that  
9 XBIZ was expanding its trade shows.

10 And when I was there, they did their first  
11 February show. Now they do them annually in January  
12 to compete with AVN straight up at the beginning of  
13 the year. The first one they ever did -- they had  
14 only done one trade show when I arrived there. Since  
15 then, then they did two a year. We did our first  
16 February one. And the very first show I did was huge  
17 for them. And that's when I actually invited the FBI  
18 to come to the XBIZ show in February of 2007 where  
19 Chuck Joyner addressed the industry and spoke about --  
20 specifically about 2257 inspections. So those were  
21 the types of things I was doing.

22 BY MS. WYER:

23 Q When you were in XBIZ, were you working again  
24 with print media?

25 A Yes, there was a print magazine. They had an

Page 19

1 online XBIZ magazine and a video magazine and so I was  
2 working -- it was almost the same type of thing. In  
3 fact, he took his model, you know, from AVN. XBIZ as  
4 a media company was begun to compete with AVN  
5 specifically. So he sort of modeled it and had all  
6 the same types of products and things that he was  
7 doing, yeah.

8 Q Are AVN and XBIZ the only two like --

9 A Well, no, YNOT is -- there's ynot.com, and  
10 YNOT actually predates in terms of articles and -- and  
11 its being in existence predates XBIZ, and not AVN of  
12 course as an entity. And both XBIZ and AVN began as  
13 "webmaster resource sites." So they began as sites  
14 that were to provide resource information and that --  
15 and -- information and access and all sorts of things  
16 for adult webmasters.

17 XBIZ blew up and decided to develop itself  
18 into a media entity. And YNOT also went down that  
19 road a little bit. YNOT hasn't had the resources or  
20 the structure or, you know, the people behind it, so  
21 it's never done any print magazines. It flurried with  
22 trade shows but it doesn't do them anymore.

23 So the two top media entities in adult are  
24 XBIZ and YNOT -- I mean XBIZ and AVN and then YNOT is  
25 like way down. And then there's just individual

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1 bloggers and -- but there's no other really trade  
2 media entities I don't think other than those two, the  
3 two biggies.

4 Q What is the relationship between AVN and XBIZ  
5 and the adult industry?

6 A What is the --

7 Q The relationship between AVN and XBIZ on the  
8 one hand as --

9 A What is their relationship?

10 Q No, not between them, but between these trade  
11 magazine, whatever they are, and the adult industry.

12 A It is a business relationship in that people  
13 advertise with them. We promote -- these companies  
14 promote the products of the industry, whether they  
15 are -- any type of product, the movies, the  
16 performers, products, promotions, however they're  
17 promoting themselves. We do news.

18 And so it's these -- you know, like with, you  
19 know, any trade entry for anyone, The Hollywood  
20 Reporter or Variety, which is not what it used to be.  
21 Those entities promote, support, and have reciprocal  
22 business relationships with companies in the industry.  
23 And so there's a lot of business that goes on in  
24 between them. And then we also have our journalistic  
25 role, which is supposed to be obviously separate from

5 (Pages 17 to 20)

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1 And then I was unemployed just doing  
2 freelance for a little while. Actually it was  
3 probably in 2008 and 2009, only for about say nine  
4 months or so. I was picking up regular freelance work  
5 from both AVN and XBIZ, because for years I've been  
6 writing major feature articles for both these  
7 publications. That's mainly what I am. I'm a writer.

8 And so -- but because I can handle staffs and  
9 I'm good with responsibility, I always got hired, and  
10 I loved running the magazine and being the editor and  
11 chief and being the boss, but I wasn't writing as  
12 much.

13 So once I was weaning off of XBIZ, I went  
14 into a freelance mode and was writing feature articles  
15 for both AVN and XBIZ and negotiating payments for  
16 that and just trying to keep my head above water as  
17 the economy -- the larger economy and my little  
18 personal economy was destroyed.

19 And then in the nick of time towards the  
20 latter part of 2009 I went to meet Darren Roberts, who  
21 was my previous employer, one of the owners at AVN,  
22 and they hired me back as a staff writer. I mean I  
23 went all the way up and then all the way back down.  
24 And things were so bad that I was hired back. There  
25 was another guy covering the online industry. They

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1 promptly let him go and so I'm like the only person.

2 So we went from full staffs at AVN, you know,  
3 these full-service companies. I had my own staff,  
4 four or five people, which we covered the entire  
5 online industry, to being the only person covering the  
6 online side of the industry for AVN. And I have been  
7 in that role since I returned to AVN as a senior  
8 editor at the end of 2009.

9 And so I'm still employed there. And I have  
10 been working as a -- just furiously as a writer since  
11 then just covering -- writing stories, stories,  
12 stories, stories, hundreds of them, mostly for the  
13 website because they don't have a magazine now and  
14 there's a new editor and chief for AVN Magazine. So  
15 we have an editor and chief and there's all those  
16 people. So that's what I'm doing now, plus I'm still  
17 coordinating the seminars for the trade shows.

18 AVN has new owners now also, and so there's a  
19 whole new ethic and feeling to AVN, and all of that is  
20 being worked out. So I was in -- when I returned,  
21 Darren Roberts and Paul Fishbein still owned AVN. And  
22 in that process I've been there -- they no longer own  
23 it. They found -- this whole -- this whole tortuous  
24 process where the owners who had owned it for 30 years  
25 and then it segued into new ownership and management.

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1 And all of that has happened between when I returned  
2 in 2009 to now. And that's kind of my story.

3 Q Are you still the only writer?

4 A I am still the only writer whose beat is  
5 specifically online. There are other staff writers  
6 who cover the video side of the industry and the  
7 novelty side of the industry. And some of those  
8 writers are well-versed and can cover online stories,  
9 but that's my beat. And there's only one writer whose  
10 beat is online and that's me. So my title is -- they  
11 had it senior editor digital, which is awkward and  
12 kind of not really correct, but it kind of gives you  
13 an indication of what my focus is. Like for online  
14 stuff they always come to me.

15 Q Going back, just because I forgot to cover  
16 this, when you were editor and chief at XBIZ --

17 A No. I wasn't the editor and chief of XBIZ.  
18 I was the publisher there. When I was at XBIZ, our  
19 editors -- both of the editors of the two magazines  
20 quit. So at a certain point in time still in 2006, I  
21 was the publisher, plus I was running the two  
22 magazines, plus I was coordinating all the seminars.  
23 My plate was rather full, but I was never the editor  
24 and chief. I was the publisher and then he gave me a  
25 new title, executive editor, and then I left.

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1 Q Okay. But I thought you said that you --

2 A Editor and chief at AVN.

3 Q Right. I thought you had said that your work  
4 at XBIZ was -- had tapered off and that's --

5 A Yes. It was tapering off, yes. It was  
6 tapering -- yeah, my -- my -- I -- at a certain point  
7 he goes, I don't need a publisher anymore. He goes,  
8 So we're going to give you a new title. And he goes,  
9 I made a mistake. I didn't need you to do whatever --  
10 whatever all that stuff was. It was just ridiculous.  
11 So I said, Well, okay. So he goes -- I go, What do  
12 you want the title? He goes, Well, I thought  
13 executive editor would be good. I'm like, Fine,  
14 whatever. Because titles are meaningless in this  
15 industry. At one point I made up my own title. It's  
16 the work that you do.

17 And these guys, they make up titles and they  
18 go, oh, he's my -- I mean, you know, I don't like it,  
19 because I don't believe in this type of stuff that  
20 they do. They give you a title but they won't give  
21 you the tools to do your job. And that happened to  
22 me, whatever. I'm over it and I'm past it, but those  
23 types of things happen. So he gave me a new title,  
24 which was executive editor.

25 And, you know, over at AVN they were freaking

7 (Pages 25 to 28)

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1 the right way. You know, it was -- it has not gone  
2 away since then. Not for -- not for any of us and  
3 certainly not for Free Speech Coalition whose role is  
4 not just to litigate but also to help members of the  
5 industry to survive certain laws if possible.

6 Q Were you involved in that aspect while you  
7 were at Free Speech Coalition?

8 A Just peripherally. If the Free Speech  
9 Coalition was going to put out recommendations for --  
10 or a press release about, say we lost the case but  
11 it's still -- you know, it is still incumbent upon a  
12 webmaster to abide by the law, this is the law. This  
13 is what you have to do. Obviously I would have been  
14 producing those.

15 Q Then you mentioned that when you went to --  
16 after you started the job at XBIZ you continued being  
17 involved with 2257.

18 A Yes.

19 Q And how did that happen?

20 A I was -- I had segued back into more of an  
21 editorial journalism role. I was no longer in an  
22 advocacy role. So at that point, because inspections  
23 were ramping up, it was -- there was -- there was  
24 still a tremendous amount of work to do in order to  
25 help webmasters and people in the industry to

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1 understand what was expected of them, what -- you  
2 know, what the current situation was. And so that was  
3 more sort of like education.

4 Staff members were writing articles if there  
5 was any news or there was any information, doing  
6 interviews with people, and I was coordinating  
7 seminars.

8 And so after I left the Free Speech Coalition  
9 I went to XBIZ. So if I went there in August,  
10 immediately -- no, in September of 2006, immediately I  
11 started preparing for the first ever February show of  
12 XBIZ. And it was huge. That's the -- that's when I  
13 got the FBI to come for the first time in history to  
14 address the industry at that show specifically about  
15 2257. So, yeah, I was steeped in it.

16 Q When you say the first ever February show, do  
17 you mean the first show --

18 A For XBIZ.

19 Q The first XBIZ show or the first show in  
20 February?

21 A The first XBIZ show.

22 Q The first show it had ever had?

23 A In February, yes, to go up against AVN.

24 Q Oh, okay.

25 A Yes. Yeah.

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1 Q Did this help?

2 A Did the --

3 MS. BAUMGARDNER: Objection.

4 BY MS. WYER:

5 Q Did bringing the FBI into the XBIZ show help  
6 with the competing against AVN?

7 A Immeasurably. I mean it was a home run. It  
8 was huge. And that wasn't the only thing I did there,  
9 I mean for that show. It was huge. Yeah. Yeah. I  
10 put them on the map. It was huge. It was a huge  
11 coup.

12 Q How did you arrange it?

13 A There -- I knew some -- I had some help. I  
14 knew some people. I didn't know Chuck Joyner that  
15 well, but I had a contact with him and they agreed to  
16 help put us together and I invited them. I just made  
17 my pitch, and he went to his superiors and got  
18 permission to do it. It was great.

19 Q Was it -- what happened during -- what was  
20 it?

21 MS. BAUMGARDNER: Objection. You want to  
22 make your question a little clearer?

23 BY MS. WYER:

24 Q Well, you were saying that Chuck Joyner came  
25 and it was great, so I was asking what happened.

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1 A It was a seminar where he came to talk about  
2 2257 inspections specifically. I asked him questions.  
3 That was the first part of the -- I forget if it was  
4 an hour or an hour and a half. We gave him plenty of  
5 time.

6 Then we had members of the audience write  
7 down questions which were submitted to attorneys to  
8 vet the questions to make sure that no questions were  
9 asked that could put the questioners in any jeopardy  
10 or trouble. The FBI is in the room. And then those  
11 questions were asked of Mr. Joyner and he answered  
12 them and then he left the room. And then for the last  
13 part the attorneys addressed the audience about what  
14 had just taken place. And that was -- that was it.

15 Q Was he the only one from the FBI --

16 A Yes.

17 Q -- who came?

18 A Yes. He was not the only FBI agent there,  
19 but he was the only one addressing the audience.

20 Q How did you know him before that?

21 A I didn't. I didn't know him. I knew of him  
22 because he was of the team who was, you know, putting  
23 together the inspections. I can't recall when I first  
24 heard his name or how -- when I first learned of him.  
25 I don't remember. But he was in charge or the -- I

11 (Pages 41 to 44)



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1 forget. I don't remember but he was present at every  
2 single inspection. And my understanding was he was  
3 either the leader of the team or the co-leader of the  
4 team.

5 Q So this trade show was February of 2007?

6 A 2007.

7 Q And what do you think the impact of that  
8 session was?

9 A Well, reading back from the article -- you  
10 know, at trade shows I'm always busy so I'm running  
11 here and I'm running there because my work is never  
12 done. But reading back from the article, it said that  
13 the audience was -- was very pleased with having him  
14 there and that they learned a lot from his answers.  
15 And so I believe that the reactions from the people  
16 who attended was very -- was positive.

17 In the article it said that the industry  
18 attorneys cautioned against taking everything that he  
19 said at face value. They asserted -- whatever. But  
20 that's what they said. But it was a very positive  
21 experience overall.

22 Q The article that you mentioned, this is the  
23 article that you said at the beginning you had looked  
24 at before this deposition?

25 A Yes.

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1 Q Is that what you're talking about?

2 A Yes.

3 Q And that was an article on XBIZ or --

4 A On avn.com. Mark Kerns wrote coverage of  
5 that meeting in 2007. So I just went onto AVN because  
6 I had forgotten -- I just wanted to remind myself when  
7 that meeting was that I had put that together, and  
8 then, of course, it all came back to me that that was  
9 in February of 2007, so I just read it last night just  
10 to -- you know, because I had forgotten. You know, it  
11 was so long ago.

12 Q So AVN covered this event?

13 A Yes. Yes. Well, yes. I know. I was like,  
14 gosh, I didn't even know that he was there, but he  
15 did. He had to because it's Mark Kerns and he has to  
16 cover this stuff so, yes. I think it was Mark who did  
17 it. You know something, it might have been someone  
18 else who covered it. It may have been another writer  
19 who covered it, but it was covered by AVN. Actually  
20 now that -- it might not have been Mark.

21 Q Did you have any further engagement with the  
22 2257 inspections that were going on at that time?

23 MS. BAUMGARDNER: Objection.

24 THE DEPONENT: No. I had no engagement with  
25 inspections other than once we learned of them,

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1 covering them. That's it. Um --

2 MS. BAUMGARDNER: You answered the  
3 question.

4 BY MS. WYER:

5 Q You can go ahead.

6 A Well, I did go back to Washington DC. There  
7 was a meeting at the FBI building when I was at XBIZ  
8 and I was invited to attend that. So I -- as a  
9 journalist. So I did attend a meeting in Washington  
10 DC at the Hoover Building with the FBI, which was  
11 invited. It's the only meeting where members of the  
12 industry were -- came in and we had a meeting to talk  
13 about inspections. I attended that meeting. But in  
14 terms of my involvement since then with 2257, it has  
15 been journalistic, and then also as a member of the  
16 board of directors of the Free Speech Coalition.

17 Q When was that meeting that you talked  
18 about?

19 A Oh, gosh. I looked that up. It was in 2007.  
20 2007. I don't remember the month. I believe later in  
21 the year.

22 Q This was the meeting at the FBI  
23 headquarters?

24 A Headquarters. Correct.

25 Q And who else was there?

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1 A A lot of people. Industry attorneys were  
2 there representing companies. There were owners of  
3 companies there. There were over ten of us that went  
4 there, that traveled back there for this meeting, half  
5 a dozen agents including an assistant director, and  
6 Chuck Joyner was there. So quite a -- a pretty  
7 sizable group.

8 Q What were you told about the purpose of the  
9 meeting before it happened?

10 A The purpose of the meeting, as I understood  
11 it, was simply to discuss the inspection regime and to  
12 address any questions the industry might have about  
13 it.

14 Q And is that what happened?

15 A Yes.

16 Q What was your impression?

17 A Extremely informative meeting. My impression  
18 was that the FBI agents were doing their job and were  
19 amenable to making inspections as -- you know, as easy  
20 and effective as possible. That was the impression  
21 that I had. They answered all the questions. And  
22 people, as I recall, seemed to be generally satisfied  
23 with the answers, despite the industry's opposition to  
24 2257. So essentially to make a bad situation as, you  
25 know -- you know, as survivable as possible. That was

12 (Pages 45 to 48)

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1 the point of it.

2 There was a lot of -- there have always been  
3 a lot of questions about inspections, you know, and  
4 what people are responsible for. A lot of confusion.  
5 So that was the purpose of the meeting.

6 Q Generally what is your perception of the  
7 relationship between the Government and the adult  
8 industry, the Federal Government?

9 A Generally my feeling is that the Government  
10 has a generally hostile position with respect to adult  
11 entertainment, but it is a legal industry and so my  
12 sense is that -- you know, there's different  
13 administrations and they bring -- they seem to bring  
14 different points of view to bear with respect to the  
15 industry. But it's tough. I mean which part of the  
16 government? I'm not sure how to answer that question.  
17 Maybe you can be more specific.

18 There's a natural -- I mean there's a natural  
19 antagonism with adult entertainment because there's  
20 criminal laws that impact it. So that's always in  
21 play.

22 Q Criminal laws. Do you mean obscenity laws?

23 A Yes, obscenity laws. Zoning laws. Zoning  
24 laws are very, very serious and impact the adult  
25 entertainment industry in a really big way. Negative

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1 often.

2 Q The zoning laws are local.

3 A Yes. But in my view, the adult entertainment  
4 clubs and businesses are the front lines of adult  
5 entertainment. I personally write about them as  
6 frequently as I can because I don't necessarily  
7 separate them from the, you know, San Fernando Valley  
8 side of the industry. I mean they're out there on the  
9 front lines and they have to deal with a lot of  
10 stuff.

11 Q Let's talk about your Daily Babylon site  
12 which is listed on your LinkedIn profile.

13 A Yes.

14 Q It says you started the site in April 2009?

15 A Yeah.

16 Q So what is that?

17 A Well, Daily Babylon was begun as a project  
18 with other -- with partners that was hopefully going  
19 to become a going concern. And we started it that way  
20 and it didn't work out that way. But that's how it  
21 was begun, as a side project from our regular jobs  
22 that would develop into something that we could, you  
23 know, monetize and maybe develop into something that  
24 could actually support us so that we could do our own  
25 thing, you know. So that's how it began.

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1 Q At the time you started it, where were you  
2 working?

3 A Well, if that's April 2009, I'm -- that's a  
4 time period where I'm mostly doing freelance, you  
5 know, and I'm just -- I'm doing freelance articles.  
6 I'm probably still part time at sex.com and I'm just  
7 cobbling together a living, because it's after the  
8 recession hit. And so that's during that time period  
9 where I was really looking to be, you know, aggressive  
10 in terms of building something and making something  
11 and making our own business and doing something like  
12 that. So that was during that time period in April of  
13 2009.

14 And so even if I left -- you know, you can't  
15 take these necessarily to the bank. Did I finally  
16 leave XBIZ in August? It might have been, but I had  
17 been pared down so much by that time and I don't even  
18 remember at that point. So April, May, June, July,  
19 August, during that time period, I'm totally -- I  
20 simply don't remember exactly. But what I do recall  
21 was this feeling that I had to get something going. I  
22 had to, you know -- we wanted to make something of our  
23 own, and that's what Daily Babylon was supposed to  
24 be.

25 Q But it didn't turn out like that?

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1 A It didn't work out. We lost our CEO because  
2 of his problems with his other company. And we  
3 didn't -- we weren't -- we didn't get the resources we  
4 needed. We had everything in place. We had our site.  
5 We had 600 stories in there. I put a business plan  
6 together. I put everything together. I was working  
7 with him, and then it just all fell apart.

8 And then I lost Kathee Brewer who had been at  
9 AVN and is now at YNOT, wonderful writer and just, you  
10 know, extremely just -- just really fabulous  
11 individual. You know, we just couldn't hold it  
12 together. So she went off to YNOT and she's still  
13 there and she's just -- you know, they have her  
14 working double time. And we just -- we couldn't --  
15 you know, we couldn't get it. So then it just all  
16 came back to me, and I was just doing my best.

17 But then I went right to AVN. And once I got  
18 to AVN, I was the only person covering the online  
19 industry. It was just -- if I could post up  
20 something, a story or two to Daily Babylon even during  
21 the week with everything that I had to do, I was lucky  
22 to do that. So it just -- we had several -- like a  
23 six-month time period we tried to get this thing off  
24 the ground. We couldn't do it. I mean just life  
25 intruded so.

13 (Pages 49 to 52)

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1 Q Well, that kind of answers this. But --

2 MS. WYER: I'll just mark this as Exhibit

3 Hymes 2.

4 (Whereupon, a two-page document was marked as

5 Exhibit 2 for identification.)

6 BY MS. WYER:

7 Q Do you recognize this?

8 A Yeah.

9 Q So is this from the Daily Babylon website?

10 A Yes, this absolutely is.

11 Q And this is that part of the website that

12 describes the people --

13 A Yes.

14 Q -- involved in the website?

15 A Yes. Those are the three people, me, Kathee,

16 and Scott.

17 Q So who is Scott?

18 A Scott was our business person. He was the

19 person who's going to take care of business while we

20 made the site, and that's the person who we -- who

21 totally imploded, just totally imploded.

22 Q He imploded?

23 A His business imploded, and he imploded

24 personally, his relationship, everything in his life

25 fell apart after his -- he had a business in adult

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1 that had been there for many years, very respected

2 person. And I mean that has nothing to do with this,

3 but there was just -- his life fell apart, and with it

4 his role with us as well. So that's what happened.

5 Q So this isn't really -- is this active

6 still?

7 A No, this is not. You know, this is still --

8 I mean, what I'm doing -- the site now, that's still

9 on the site, but it's not relevant anymore. I'm in

10 fact -- and after my accident, in fact, I thought that

11 the site went offline when I checked it. I was in the

12 hospital for three weeks. I mean it was a very

13 serious accident. I had seven surgeries and I wasn't

14 paying attention. And when I got back home I checked

15 the site and it was offline and I thought I had it for

16 another year. And I called Go Daddy and I had it up,

17 you know, within a day. I didn't even know it had

18 gone offline because I wasn't checking and I was in

19 the hospital. You know, I was just on my back the

20 whole time.

21 So now what I'm doing is I'm going to -- it's

22 on a Joomla platform. That's a CMS sort of platform.

23 I'm going to switch over to WordPress. I am not going

24 to let Daily Babylon go because I love the name and I

25 love the idea, but I need to switch it over to a

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1 platform that's easier for me to do. The way it's

2 structured right now is like a full site, and we had

3 stories -- lots of stories in each one of these areas,

4 money, legal politics, cultural, and society. There's

5 600 stories in there, but I can't do it by myself. I

6 have to turn it into a simpler type of blog and then

7 continue on with it with a similar mission but just

8 simpler, because it's impossible for me to do this at

9 AVN and then also do it here. I can't. So that's

10 what I'm doing right now.

11 MS. WYER: I'll mark this as Hymes 3.

12 (Whereupon, a two-page document was marked as

13 Exhibit 3 for identification.)

14 BY MS. WYER:

15 Q Do you recognize this?

16 A Yes.

17 Q This is the about Babylon page on the Daily

18 Babylon website; right?

19 A Uh-huh.

20 MS. BAUMGARDNER: You have to answer

21 verbally, Tom.

22 THE DEPONENT: Okay.

23 BY MS. WYER:

24 Q So what does this mean?

25 MS. BAUMGARDNER: Objection.

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1 THE DEPONENT: It's an attempt to define what

2 we're about.

3 BY MS. WYER:

4 Q Does this reflect what you were saying about

5 what you had hoped the Daily Babylon would be?

6 A Yes.

7 Q Is it still accurate in any way?

8 MS. BAUMGARDNER: Objection.

9 THE DEPONENT: Parts of it may still be

10 accurate.

11 MS. BAUMGARDNER: Take your time to read

12 through it.

13 THE DEPONENT: Some of it is relevant, some

14 of it no longer is because there's, first of all, no

15 longer a we. So there's no longer a Kathee Brewer.

16 So it's just me. And I'll probably have to cut back

17 on some of this. It's like kind of ambitious. I

18 wanted to really cover everything. Everything -- you

19 know, a limited form of everything. I had honed these

20 subjects down to things that were of intense interest

21 to the both of us and other writers that we knew,

22 because the idea was obviously to bring in other

23 contributors and then staff writers and build it up.

24 But whether once I've moved it over to my new thing I

25 stick with all of these, probably because they're

14 (Pages 53 to 56)

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1 A That would have been let's say -- boy, oh,  
2 boy. I would say -- when did we implode? It had to  
3 be late 2009. It had to be. It was late 2009. It  
4 wasn't long after -- it wasn't long -- you know, this  
5 was all like -- not this stuff, but all this, like  
6 this was posted when? This was updated in May of  
7 2009. So putting the whole site together. We're all  
8 done. We're all ready to go and the whole thing falls  
9 apart. So it was 2009. And exactly when, I don't  
10 know.

11 Q And this was because of the recession?

12 A Yeah, basically and our partner -- our  
13 business partner, the partner we were counting on to  
14 take care of the business side was no longer available  
15 to us. And then we ran out of time essentially where  
16 we had to -- you know, unless you've got a buffer, a  
17 zone to give yourself where you can survive and pay  
18 your bills for six months while you're wrapping up  
19 your business or something like that, you've got to  
20 get back to work.

21 And so at a certain point in time I ran out  
22 of time. And so, you know, I've been very lucky. And  
23 then AVN came back to me and offered this job, you  
24 know, a position making much less than I was making  
25 before, but it was a job I was happy to have and happy

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1 to be writing again.

2 Q So you don't keep records under the 2257  
3 requirements?

4 A I do not.

5 Q Have you ever kept --

6 A No.

7 Q -- those records?

8 A No. No.

9 MS. BAUMGARDNER: Let her finish.

10 THE DEPONENT: I'm so sorry. No.

11 BY MS. WYER:

12 Q Have you ever created images of sexually  
13 explicit conduct?

14 A No.

15 MS. WYER: Let's go to the -- let this be  
16 marked as Hymes 7.

17 (Whereupon, a 21-page document was marked as  
18 Exhibit 7 for identification.)

19 BY MS. WYER:

20 Q Do you recognize this document?

21 A Yes.

22 Q These are your responses to the first set of  
23 written discovery requests.

24 A Correct. Yes.

25 Q How were these responses prepared?

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1 A I answered the interrogatory questions and  
2 then sent them off to the attorneys.

3 Q So you prepared the answers?

4 MS. BAUMGARDNER: Objection. That's not what  
5 he said.

6 THE DEPONENT: I answered the questions I was  
7 able to answer and -- I mean we prepared this  
8 together.

9 BY MS. WYER:

10 Q Meaning you and your --

11 A Yeah. I didn't actually create this  
12 document. I made my own Word document and sent it  
13 back to the attorneys and then received this.

14 Q Let me just ask. What is your claim in this  
15 case based on?

16 A My claim in this case is simply based on the  
17 fact that my -- I believe my expression has been  
18 chilled because of 2257. For me, it's what I'm not  
19 prepared to do rather than what I have done and the  
20 burden that I have incurred. If there's been a  
21 burden, it's because I'm censoring myself, the types  
22 of images that I might use on the site because I  
23 don't -- I can't -- I don't have any money to use a  
24 third-party service. They would have to be kept in my  
25 home. I have a nine-year-old. My wife has nothing to

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1 do with the industry. We don't -- I'm not a porn guy.  
2 I cover the industry and don't want agents at my --  
3 I'm just not going there. If I had an office or  
4 something like that. I'm not doing that. So that is  
5 the -- that has been my situation that the records  
6 will be kept at home and I'm -- that is -- that's --  
7 that's my part of -- that's my position with respect  
8 to this case.

9 Q It's based -- so this is your concern, that  
10 the records would be kept at your home?

11 A In addition to other concerns that I have  
12 with 2257, that it's essentially impossible to comply  
13 with. Yes, that was probably the deciding factor or  
14 one of the deciding factors, that I wanted to avoid  
15 triggering 2257. And that is still the case with  
16 whatever the new iteration of Daily Babylon will be.

17 Q What is it that you would do that you have  
18 not done in the absence of the requirements?

19 A I would probably be a lot more open to using  
20 images that I am now unwilling to contemplate using  
21 that could, in fact, trigger 2257. And if I was  
22 unsure, I would err on the fact that they did, which  
23 means that I would of necessity, because I follow the  
24 law, have to keep the records, have to abide by  
25 everything. That's just it for me. I don't break the

17 (Pages 65 to 68)

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1 law. So I'll avoid the law rather than engage this  
2 one. I mean I will avoid it.

3 Q Where would these images come from?

4 A They might come from industry sources. They  
5 might come from -- they might come from -- I might  
6 create them myself. They could come from any number  
7 of areas. I might go on set. I might shoot something  
8 that triggers 2257 at a trade show, at a party. They  
9 might be sent to me as part of marketing materials,  
10 any number of ways. I might find them on the Internet  
11 and I might be able to use them. They might have a  
12 free open copyright that I can use. Any number of  
13 ways.

14 Q Do you take photographs on sets normally?

15 A Normally, no, because I'm the online guy. I  
16 don't normally go on sets, but I've been on some and  
17 I've been in proximity to adult activity certainly  
18 over the years. So I would want to cover it.

19 Q Have you ever created a photograph of --

20 A No.

21 Q -- of sexually explicit material?

22 A No, I have not. I have not.

23 Q Looking at your response to Interrogatory 10.

24 A Uh-huh.

25 MS. BAUMGARDNER: Take your time to read it

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1 first, Tom.

2 THE DEPONENT: Okay.

3 BY MS. WYER:

4 Q So it says on the top first paragraph, the  
5 first paragraph on Page 6, so the next page. It says,  
6 "For Daily Babylon, I use graphics to most accurately  
7 illustrate a story, often using marketing materials  
8 provided by companies, including box covers, banners,  
9 e-mailed graphics, or other pre-produced marketing  
10 materials that I may either use as provided or change  
11 to suit my own purposes. I might, in fact, use  
12 supplied images along with my own, or other licensed  
13 or bought images to create something original." Did I  
14 read that accurately?

15 A You did.

16 Q What do you mean by this?

17 A Hum. Well --

18 MS. BAUMGARDNER: Objection. Go ahead.

19 THE DEPONENT: I mean hum. I don't want to  
20 just reread it. It means -- I mean it's really  
21 literal. These are my words. You create a graphic.  
22 You have an image to illustrate a story. You know,  
23 it's either -- you know, you either try to be creative  
24 and -- you know, I mean it's as simple as that.

25 Lots of people in this industry provide

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1 marketing materials of differing explicitness, to say  
2 the least. They can come in, you know, just -- you  
3 know, just -- it's just unbelievable what you will be  
4 sent. So you take that as an editorial entity,  
5 whether it's AVN, XBIZ, or me. You can -- it's up to  
6 you what part of those images you use or how you  
7 utilize them.

8 So this is just saying -- that is just the  
9 process. This is the process. They come in. You use  
10 them as they are or you change them or you create  
11 something new with them. And so that's what the --  
12 that's what the intent was. You know, that's what the  
13 process ideally is.

14 BY MS. WYER:

15 Q Do you receive this marketing material?

16 A Less and less now for Daily Babylon. Hardly  
17 at all because it's fallen off the map. When we were  
18 ramping up in 2009, people in the industry knew us and  
19 we were sending out things, and I had also signed up  
20 for press releases. So I still, in fact, on my Daily  
21 Babylon account will receive those, because what  
22 they'll do is they'll just put you on a list and  
23 they'll keep you on the list and they send out their  
24 PR. So I still will occasionally receive PRs, but I  
25 don't receive nearly -- and the PRs will sometimes

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1 have images attached to them for use or not.

2 And so -- but I receive far fewer now because  
3 Daily Babylon has, for all intents and purposes, been  
4 moribund for the last couple of years, and so not so  
5 much. But we did -- we were receiving them. And all  
6 you have to do is sign up to receive press releases.  
7 Send them to me at AVN and send them over here also,  
8 and all the PR people will gladly do that.

9 Q So when you were getting this PR material,  
10 were you using images from it?

11 A Well, as I state here, of course if I did use  
12 them -- if I used explicit ones, I would be triggering  
13 U.S.C. 2257. So, in fact, I was erring on the side of  
14 caution to not trigger it. So if they came in and  
15 they were explicit or if I wanted to use them and I  
16 thought they triggered 2257, I wouldn't use them.

17 Q But did you use other images from --

18 A Well, what I started doing on -- what I  
19 started doing for a lot of my stories was I would find  
20 a book on amazon.com where the book had some sort of  
21 relevance to the story and it was a really cool box  
22 cover, and I would use the book to illustrate my story  
23 and link that image to Amazon so that maybe I could  
24 drive some sales of the book to Amazon to those  
25 people.

18 (Pages 69 to 72)

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1 plus the knock on the door means, yes, I'm not -- I'm  
2 not going to assume any risk of criminal prosecution  
3 under the statute, as I wrote here. I'm going to  
4 avoid it. I'm not going to do it. I can't. I have  
5 to support my family. There's no one else.

6 BY MS. WYER:

7 Q Could you explain more what you mean when you  
8 were talking about the implications?

9 A The inference that it's criminal, that  
10 there's a criminal statute, in my mind, the inference  
11 from that. What is being inferred is that the  
12 industry wants to use these underage, and we have to  
13 have these statutes in order to prevent them from  
14 doing what they want to do, which is to use underage  
15 performers even though it's already, you know, one of  
16 the worst crimes on the books that you can do.

17 Not only do I find that wrong, I find it  
18 offensive. And that is precisely what I read into  
19 these statutes. Absolutely, literally and precisely,  
20 that you can only infer that from adding this  
21 criminal -- criminal remedy onto this. It's not a  
22 fine. It's not a, you know, some sort of other sort  
23 of business related sanction. It's not a sanction.  
24 It's jail time potentially. And that's just -- you  
25 know, I don't know.

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1 My understanding is there's not too many  
2 other regulatory schemes that necessarily, you know,  
3 come with that. And if they do, I just think there's  
4 a really good reason. I don't see it here. That's  
5 what I mean by inference.

6 That's the inference that I read into that,  
7 that you're inferring that these people want to do  
8 that. And I don't believe it. It's not my  
9 experience. It's not what I believe about this  
10 industry or the people in it. And even if they  
11 wanted, there's child pornography laws. You face 15  
12 years. It's just not going to happen.

13 Q So do you -- if you were going to use an  
14 image -- a sexually explicit image in the absence of  
15 the requirements, would you do anything to verify the  
16 ages of the people appearing in the image?

17 A Would I do anything to verify the ages of the  
18 people? Absent these regulations, other than a common  
19 sense assessment of the content, probably not.  
20 Probably the answer is no.

21 Q So you would just rely on looking at them?

22 A By and large, yes. The vast majority of  
23 images, you know, that we use are performers who we  
24 know. And I would say -- and, you know, are companies  
25 that we have worked with, so I would say most of the

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1 time. I mean, you know, we get a number of years  
2 under your belt and you know. And if you're dealing  
3 with people you don't know and you don't know where  
4 images come from, you might do some more work on that,  
5 you know, so.

6 MS. WYER: I'll mark this as Hymes 8.

7 (Whereupon, a four-page document was marked as  
8 Exhibit 8 for identification.)

9 BY MS. WYER:

10 Q At the bottom of this exhibit do you see  
11 where it says XBIZ Premiere?

12 A Okay.

13 Q Do you recognize this as the kind of content  
14 that is -- well, have you seen this article?

15 A I have not.

16 Q Do you recognize this as the kind of article  
17 or material that could appear on the XBIZ Premiere  
18 website, or are you familiar with XBIZ Premiere?

19 A This is actually from the magazine. So this  
20 appeared in the magazine, I presume, because this is  
21 XBIZ Premiere, which is a print magazine. This seems  
22 to be the type of ad that is --

23 MS. BAUMGARDNER: Take your time to review  
24 it.

25 Are you talking about the news story or the

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1 advertisement?

2 MS. WYER: The whole thing.

3 THE DEPONENT: Oh. It looks typical of what  
4 they might publish.

5 BY MS. WYER:

6 Q And when you say "this seems to be the type  
7 of ad," what were you --

8 A These are box covers and they don't look  
9 entirely unique to me.

10 Q So is this the kind of PR material that you  
11 were talking about -- or this isn't from an article.  
12 But this is an ad.

13 A Yes.

14 Q Can you tell by looking at these individuals  
15 what their ages are?

16 A No.

17 Q And I'm talking about the ad that appears on  
18 the first page of the article.

19 A Correct. No.

20 Q Do you think that these images trigger the  
21 2257 requirements?

22 A I'm -- I'm a little unclear. There's nothing  
23 sexually explicit here necessarily. I'm unclear.  
24 They -- they may. I have to tell you, I'm not sure.

25 Q Do you recognize the individuals?

22 (Pages 85 to 88)



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1 A I wouldn't verify ages because I wasn't -- I  
2 wasn't -- I wasn't triggering 2257 so the issue of age  
3 for me was not an issue.

4 If there's someone -- if there's an image for  
5 Daily Babylon that I think even might remotely we're  
6 flirting with underage territory, I'm not going to use  
7 it. But I'm not -- but it's not a question of age  
8 anyway. Because if I decided, which I wouldn't,  
9 because it's an adult site, even if it's not a porn  
10 site, why would I put -- I probably -- though I think  
11 I actually put a story up with a picture of my son at  
12 one point. I think I did put one up there. And I  
13 think I had that. So I think -- as I recall, I think  
14 I did that once. Something happened or something, you  
15 know, and I put a picture of him, probably the only  
16 time I would do that. I don't like to mix that, you  
17 know.

18 But the issue of age is not relevant other  
19 than that -- other than my own, you know, disinterest  
20 in doing that because I'm not triggering 2257, so why  
21 would I worry about age.

22 Q But if there were no 2257 and you were going  
23 to use such images, would you know that people that  
24 appeared?

25 A It's hard for me to -- I can't theorize or

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1 speculate. We do have 2257. We've got to live in the  
2 reality of 2257. So if there were -- you know, there  
3 was no 2257. There was no 257. You didn't see a lot  
4 of underage performers, you know, in this industry  
5 because we already had child pornography laws.

6 The sanctions were already so onerous, so  
7 serious that no one goes there. Plus if you're  
8 shooting people, whether it's a film or photographing,  
9 you need model releases. You're going to take that ID  
10 anyway because you need to protect your material for  
11 copyright purposes so that other people don't rip it  
12 off. You've shot those images. You have  
13 relationships with them. I don't see it. I don't see  
14 it.

15 We didn't have it before or even  
16 beforehand -- even before it was being -- you know,  
17 2257 languished there for years. It wasn't enforced.  
18 We didn't really have a problem in this industry.  
19 Whatever problems there were with underage performers  
20 were -- even few and far between doesn't begin to  
21 state how rare it was.

22 Q Other than the criminal possibility of  
23 criminal sanction, is there anything specific in the  
24 requirements that you find problematic?

25 A I think the cross -- what is it called? The

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1 cross where you have to -- what is it called?

2 MS. BAUMGARDNER: I can't help you.

3 THE DEPONENT: Oh, shoot.

4 BY MS. WYER:

5 Q Cross-referencing?

6 A Cross-referencing is, I think, is  
7 problematic. And my understanding is that the  
8 majority of people who were not compliant who were  
9 inspected, of the 20 or so people who were inspected,  
10 that that was their issue, that they weren't compliant  
11 because of, you know, they got that kind of stuff  
12 wrong.

13 And I think it's very confusing and very  
14 difficult for people, especially in this industry.  
15 That's particularly problematic. You know, the  
16 posting up, giving home information, which you can  
17 now, my understanding is, redact that. That was  
18 problematic. You know, there were certain things that  
19 were very problematic with 2257.

20 Q Do you see any chance that you would ever  
21 have to worry about cross-referencing if you were  
22 going to --

23 A Everyone does. If you're under 2257, you  
24 have to worry about cross-referencing.

25 Q Would you anticipate using the same -- images

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1 of the same person more than once?

2 A Under the original scheme for Daily Babylon,  
3 absolutely. Since, you know, you're covering the same  
4 companies, the same performers, doing different  
5 things, so absolutely. Totally. Frequently.

6 Q And now?

7 A Not at all. Not really. But just -- I'm not  
8 actually doing Daily Babylon. But if I get back to  
9 it -- you know, it's hard for me -- I still want to  
10 cover the industry. I'll just have to do it in just a  
11 totally safe way. That's just what I'll have to do.

12 There's tons of images of performers and of,  
13 you know, people that you can use that are -- they're  
14 actually clothed. They're just there. They're  
15 glamour shots or something like that. So there is  
16 other ways to get around it. Totally. But it's not  
17 as -- I don't know. It's not -- you know, it's -- you  
18 know, it's safe. It's not -- you know, it may or may  
19 not illustrate the point -- the story or the point.

20 Q And the other thing you mentioned about  
21 posting -- I think you -- were you talking about the  
22 transmission of performer address information?

23 A From primary to secondaries. That was always  
24 extremely problematic. So my understanding now is you  
25 can send documentation and redact, you know, addresses

24 (Pages 93 to 96)

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1 is that often how content gets to someone, there's  
2 brokers, they buy it. It's a complicated, as you may  
3 know, content world out there, how content goes.

4 Generally speaking -- I want to be careful  
5 here because, you know, if -- in a world -- I don't  
6 really have a problem with a -- with a notification  
7 stating where the records can be kept -- where you can  
8 find those records. What -- you know, and so, you  
9 know, in a general way, I -- you know, if a regime  
10 could be created that is not onerous and not  
11 burdensome and where there's a trail back to the  
12 primary producer where these records can be found and  
13 it's workable and there's no criminal sanctions  
14 attached to it, that's relatively reasonable, and I  
15 wouldn't -- I personally would not have an objection  
16 to that, no.

17 BY MS. WYER:

18 Q Just trying to flush out what you were  
19 saying. Is that because the trail could be so  
20 convoluted and the primary producer and the --

21 A Yeah.

22 Q -- where the images ultimately show up, there  
23 could be many steps along the way, different places or  
24 intermediaries --

25 A Correct. I mean there are content brokers.

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1 There are businesses, you know, that are content  
2 brokers out there, and so they do provide content.  
3 There's white label entities that provide you with  
4 content, so they got that content from somewhere.

5 So, yes, there are -- there absolutely are  
6 intermediaries in this industry. But still my belief  
7 is that the content brokers, you know, deal in 2257  
8 compliant content and, you know -- so -- but, yes,  
9 that -- that's the complication, that there are  
10 intermediaries and it's not always directly from the  
11 producer, you know, right to the secondary producer.  
12 That's not insurmountable.

13 Q But without some kind of a way to link things  
14 back from a secondary producer, it could be very  
15 difficult to trace it back to the primary producer, or  
16 if the secondary producer does not have his own  
17 records or provide a way to link back to the primary  
18 producer, it would be very difficult to find the  
19 original records.

20 MS. BAUMGARDNER: Objection.

21 BY MS. WYER:

22 Q Is that right?

23 A You know, that's theocratical. I guess  
24 potentially. Potentially.

25 Q Oh, what time period were you a board member

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1 of the Free Speech Coalition?

2 A I -- from -- I joined -- I ran for the board  
3 when I was still at XBIZ, so I think it was like in  
4 2008, something like that that I ran and I was elected  
5 to the board. And I was a board member for two terms  
6 and then I declined to run again this last time. I  
7 think -- what is it? Two year terms? So eight, nine,  
8 ten, eleven, twelve. And then I just was done.

9 Q What does it mean to be a board member on the  
10 Free Speech Coalition?

11 A Well, it means that the board has a lot of  
12 responsibility of the Free Speech Coalition in terms  
13 of setting priorities, approving budgets, and doing  
14 the substantial things that boards do. It's not --  
15 it's a hands-on board, not just fund raising or  
16 anything, but actually helping to devise mission,  
17 focus, strategy, that type of stuff, the real -- all  
18 that stuff is taken and then implemented by Diane and  
19 the staff. But the board is quite involved.

20 Q How many people are on the board?

21 A That's a good -- 10 to 12, something like  
22 that.

23 Q Who are they? I mean you were a journalist.  
24 Who are --

25 A Yeah. Well, they're mostly company owners,

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1 but there's some other types. That's one of the  
2 reasons I left is because writers and journalists on  
3 there. There should be more company owners. But it's  
4 a mix. It's a mix of people who are -- don't own  
5 companies but care about the issues and are sort of  
6 activist-minded and want to roll up their sleeves and  
7 help the industry get involved. And then company  
8 owners who have an obvious vested interest and, you  
9 know, a performer or two and then attorneys. It's a  
10 mix bag.

11 Q And company owners, you mean owners of  
12 companies that produce films, adult industry films?

13 A Not just that. They might be those. They  
14 might be owners of novelty companies or of website  
15 companies. So the owners come from -- you know, from  
16 the different areas of the industry, not just the  
17 producers. Because Free Speech Coalition represents  
18 all of those, you know, disparate sections of the  
19 industries.

20 MS. WYER: We'll mark this as 10, Hymes 10.

21 (Whereupon, a two-page document was marked as  
22 Exhibit 10 for identification.)

23 BY MS. WYER:

24 Q Do you recognize Exhibit Hymes 10?

25 A I don't recognize it, but it's from Daily

28 (Pages 109 to 112)

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<p>1 of reasons why I eventually left the ASACP.  2 Q What were the other reasons?  3 A The shift in mission.  4 Q Of --  5 A The mission shift.  6 Q That was what your were just describing  7 before the break?  8 A Uh-huh. And that's it basically. A lot of  9 this stuff really didn't come to light until many  10 years later.  11 Q So -- okay. I think that's covered. So  12 going back to your work on Daily Babylon. So if you  13 were going to write an article for Daily Babylon based  14 on -- you never know in advance what the topics of the  15 articles are going to be. You can't -- can you  16 predict with any certainty what the topics of articles  17 that you might write in the future might be?  18 A No.  19 MS. BAUMGARDNER: Objection.  20 THE DEPONENT: No.  21 BY MS. WYER:  22 Q And in short, you could write about anything  23 in the future really.  24 A Yes. Right.  25 Q And you don't know in advance what</p>	<p>1 BY MS. WYER:  2 Q And you're not getting marketing materials,  3 very much marketing materials right now?  4 A No.  5 Q But the kind of marketing materials you would  6 anticipate getting if you were to start up -- become  7 more active on the site again, what kind of things  8 would they be marketing or promoting?  9 A The same stuff, adult films. I don't really  10 do novelty on here, so websites, web content,  11 performers, parties, you know, anything involved with  12 their businesses I suppose.  13 Q So you don't know -- you can't predict  14 exactly what film or exactly what performer you might  15 get promotional material about.  16 A Correct.  17 Q And you can't predict who would be in the  18 images -- who would appear in the images that you  19 would get as part of that promotional material.  20 A Correct.  21 Q What kinds of -- who would the primary  22 producer be in this kind of material?  23 A Primary producer would be, I suppose, Vivid,  24 you know, a studio, or something like that or Wicked.  25 You know, they would be a primary producer or anyone</p>
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<p>1 promotional materials you might get in connection  2 with -- from -- if you did start up Daily Babylon  3 again and you did begin to get promotional materials  4 or marketing materials again, you don't know exactly  5 what the nature of those materials will be in advance.  6 A Correct.  7 Q So they could involve -- would this kind of  8 marketing material, would that material include  9 marketing about films or online production by  10 producers?  11 A Yes. Yes.  12 Q Online content produced by industries or  13 companies who are themselves creating or posting as  14 secondary producers depictions of sexually explicit  15 conduct?  16 A You've got to rephrase that for me, please.  17 Q Sorry. Is the kind -- what do the -- so  18 right now Daily Babylon is basically not functioning;  19 right?  20 MS. BAUMGARDNER: Objection.  21 THE DEPONENT: It's live, but it's more or  22 less moribund. I'm not actively posting to it but you  23 can go and access it and read all the past articles on  24 it. But it's not just being updated regularly.  25 ///</p>	<p>1 who's shooting primary content. So there's lots of  2 producers with primary content.  3 Q So essentially you could be getting marketing  4 material from any of those producers that could  5 contain images of sexually explicit material about a  6 film that hasn't even been made yet with performers  7 that you can't predict who they might be.  8 MS. BAUMGARDNER: Objection.  9 THE DEPONENT: I guess the answer is yes. I  10 don't -- I don't -- the answer is yes. I don't know  11 that they're going to send out. It's up to their  12 business, what they're producing. I don't know. They  13 send out press releases. We never know.  14 MS. WYER: I'll mark this as Exhibit Hymes  15 13.  16 (Whereupon, an 11-page document was marked as  17 Exhibit 13 for identification.)  18 BY MS. WYER:  19 Q Do you recognize this document?  20 A Yes. This is my answers to the second set of  21 interrogatories.  22 Q Did you go through the same process in  23 preparing these answers that you described for the  24 first set?  25 A Yes.</p>

33 (Pages 129 to 132)

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<p>1 Q Looking at Interrogatory 22, it starts on 2 Page 6. 3 A Okay. 4 Q Did you have a chance to read that? 5 A Uh-huh. 6 Q So your response says, "As a journalist, I am 7 subject to the code of ethics and standards of my 8 profession as well as state and federal laws that 9 prohibit the depiction of minors in sexually explicit 10 expression." Did I read that correctly? 11 A You did. 12 Q What code ethics and standards are you 13 subject to? 14 A Of my profession to tell the truth, to 15 protect my sources, to -- to basically -- that's it. 16 You know, it's a hard job and it's very simple. Those 17 are basically it. 18 Q How did you become subject to these codes and 19 standards? 20 A Self-imposed. 21 Q Did you go to -- did you get any degree in 22 journalism? 23 A I do not have a journalism degree. 24 Q So how can it -- how does one know that 25 you're a journalist?</p>	<p>1 journalist. 2 A And often do. 3 Q So like if I made a website and posted an 4 article, I could say I was a journalist. 5 A Yes. 6 Q And what would be the difference between you 7 and some random person like me who just -- 8 A I don't know. It's too vague. I would have 9 to see. You know, I mean I can't say without -- about 10 something I don't know with a specific -- they're 11 either acting journalistically or they're not. 12 Q But what is the definition of -- I mean you 13 have a certain idea of what a journalist is. 14 A Yes. 15 Q So you would decide -- you would go and you 16 can only decide whether another site is journalistic 17 by going and looking at the site and seeing if it 18 seems to meet your own standard criteria? 19 MS. BAUMGARDNER: Objection. 20 THE DEPONENT: Is the question what I would 21 do? Yes. 22 BY MS. WYER: 23 Q So it would be a case-by-case -- 24 A Yes. 25 Q -- decision?</p>
Page 134	Page 136
<p>1 A Because I've been working as one. I've been 2 working as one for years and years and years, so I'm a 3 journalist. I backed into it. 4 Q As a journalist -- do you have to get a 5 license to become a journalist? 6 A You do not. 7 Q Do you enter into any kind of contract to 8 follow journalistic codes and standards? 9 A No, you do not. 10 Q Is anyone who writes a lot of articles a 11 journalist? 12 A No. 13 Q Who decides whether someone is a journalist 14 or not? 15 A I don't have that answer. I'm not sure that 16 there is an answer to that. I'm not sure that there's 17 a god journalist or journalist god that makes that 18 determination. I just think -- there is no one who 19 makes the final determination that someone is a 20 journalist. 21 Q So not everyone who posts articles on the 22 Internet would qualify as a journalist in your view. 23 A In my opinion. 24 Q But someone could claim to be a journalist. 25 Anyone who posted articles could claim to be a</p>	<p>1 A Yes. 2 Q Or evaluation? 3 A Yes. 4 Q Going back to the first set of 5 interrogatories, which was Exhibit 7. Look at 6 Interrogatory 7. 7 MS. BAUMGARDNER: Do you have a question? 8 BY MS. WYER: 9 Q I was indicating. Have you had a chance to 10 read it? 11 A Yeah. 12 Q In the first paragraph you say the 13 statutes -- "I wish to use visual depictions of 14 sexually explicit imagery that depict mature adults on 15 my website to illustrate its written content. The 16 statutes are not narrowly tailored to advance any 17 interest in protecting children as applied to sexual 18 imagery depicting mature adults published as part of a 19 story addressing adult topics on my website." 20 Is there anything other than the points 21 you've already made that you would provide as a 22 further detail on why you think the statutes are not 23 narrowly tailored? 24 A Points -- other points I made where? 25 Q That we've already talked about here today.</p>

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1 A Only one, the Steubenville.  
 2 Q Which one was that?  
 3 MS. BAUMGARDNER: Last one under H.  
 4 BY MS. WYER:  
 5 Q What was that? Did that show an actual rape  
 6 occurring?  
 7 A I'm just -- I'm sorry. I misunderstood the  
 8 question. I'm just informed about the case and I  
 9 didn't look at the actual documentary, so I don't  
 10 know.  
 11 Q Have you seen documentaries that show rapes  
 12 or sexual abuse occurring that would qualify as  
 13 depictions of sexually explicit conduct?  
 14 A I'm sorry. The question again? Is it have I  
 15 seen documentaries?  
 16 Q Have you seen documentaries that include  
 17 footage of an actual rape occurring or sexual abuse  
 18 occurring?  
 19 A I've seen documentaries on Abu Ghraib in  
 20 which there's sexual abuse taking place.  
 21 Q In your view, would those images meet the  
 22 definition of sexually explicit conduct under the  
 23 requirements?  
 24 A I can't -- I don't know. I don't know. They  
 25 were -- the ones I saw were redacted. I don't think

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1 the original images were pixelated or redacted. So  
 2 the original images were of actual sexual abuse, so it  
 3 may very well.  
 4 Q Are there other examples that you can think  
 5 of?  
 6 A For me personally, no.  
 7 Q Do you create -- you've already said that you  
 8 don't create images yourself of sexually explicit  
 9 conduct; is that correct?  
 10 A Correct.  
 11 Q Does that include private images or private  
 12 communications?  
 13 A Correct.  
 14 Q So --  
 15 A Yes.  
 16 Q -- have you ever sent depictions of sexually  
 17 explicit conduct through your cell phone, if you have  
 18 a cell phone?  
 19 A I do, and I never have.  
 20 Q Have you posted such images on Facebook?  
 21 A Never.  
 22 Q Do you know other people who have sent images  
 23 to their sexual partners depicting sexually explicit  
 24 conduct?  
 25 A I don't know. I don't know yes or no. I

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1 don't -- I don't know if they -- I don't know.  
 2 Q On your website -- I don't know if I have  
 3 a -- do you remember on your Daily Babylon website  
 4 listing Wicked as the Whore of Babylon or something  
 5 like that?  
 6 A No.  
 7 Q Or something --  
 8 A No. No. No. That was going to be -- the  
 9 Whore of Babylon was going to be a regular little  
 10 feature where we picked someone who had done something  
 11 especially horrible out there and they were going to  
 12 be our weekly Whore of Babylon. And it could have  
 13 been anyone. So Wicked, no. It was like people  
 14 outside. It would have been like Jerry Falwell or  
 15 someone like that. Public figures who did something  
 16 so egregious that they earned the Whore of Babylon.  
 17 That's all that was. Yeah, I had one up there and  
 18 just everything fell apart, but it wasn't Wicked. I  
 19 don't believe it was Wicked.  
 20 Q What is Wicked Pictures? Is it -- it's not a  
 21 large -- is it a large --  
 22 A It's an adult entertainment studio.  
 23 Q Is it one of the largest do you think?  
 24 A It is -- I don't really know. It's one of  
 25 the originals. It's one of the oldest. And it's one

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1 of the most famous. And I don't -- they're all  
 2 private companies, so I don't know, you know, whether  
 3 it's one of the largest or not. But it's certainly  
 4 one of the largest in terms of brands.  
 5 Q And Vivid, is that another one --  
 6 A Yes.  
 7 Q -- similar to that?  
 8 A Yes.  
 9 Q Are there any others that are of similar age  
 10 and brand recognition?  
 11 A Sure. Yes.  
 12 Q And size?  
 13 A Yes.  
 14 Q Like what?  
 15 A Evil Angel, Digital Playground. Those are  
 16 just two. There's a number of studios that have been  
 17 around for years.  
 18 Q When you were talking about the end of the  
 19 period right before you got your current job at AVN --  
 20 A Uh-huh.  
 21 Q -- did you go bankrupt?  
 22 A I did.  
 23 Q So in this article --  
 24 MS. WYER: We'll mark this as Exhibit 14.  
 25 (Whereupon, a two-page document was marked as

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<p>1 Exhibit 14 for identification.)</p> <p>2 BY MS. WYER:</p> <p>3 Q This article is from your Daily Babylon</p> <p>4 website?</p> <p>5 A Yep.</p> <p>6 Q Correct?</p> <p>7 A Correct.</p> <p>8 Q And it's about bankruptcy written by you?</p> <p>9 A That's right.</p> <p>10 Q So is it about -- it's written in first</p> <p>11 person?</p> <p>12 A Yes, it is.</p> <p>13 Q Is it actually about your own bankruptcy?</p> <p>14 A Yes.</p> <p>15 Q Okay.</p> <p>16 A And that's me. Not really. See, I had hair</p> <p>17 then.</p> <p>18 Q Bankruptcy does --</p> <p>19 A Yeah, it does that to you.</p> <p>20 Q So how many hours are you now working at</p> <p>21 AVN?</p> <p>22 A Well, currently I'm on disability, so I work</p> <p>23 full-time hours. Full time plus.</p> <p>24 Q Is that like many jobs where you actually</p> <p>25 work more than 40?</p>	<p>1 CROSS-EXAMINATION</p> <p>2 BY MS. BAUMGARDNER:</p> <p>3 Q Mr. Hymes, let's just talk about -- a little</p> <p>4 bit about Daily Babylon. You've in no way abandoned</p> <p>5 that project, have you?</p> <p>6 A No.</p> <p>7 Q It still remains very important to you,</p> <p>8 doesn't it?</p> <p>9 A Yes.</p> <p>10 Q And it's an important avenue and outlet for</p> <p>11 your expression on areas of great concern and</p> <p>12 interest; correct?</p> <p>13 A Correct.</p> <p>14 Q Okay. So all the issues with regard to 2257</p> <p>15 are just -- you haven't abandoned those. They are</p> <p>16 still present. It's just not a business venture</p> <p>17 that's going to be able to support you; is that</p> <p>18 accurate to say?</p> <p>19 A Correct. That is accurate to say.</p> <p>20 Q Now, Ms. Wyer asked you questions about the</p> <p>21 burdens of 2257 and what it imposes.</p> <p>22 A Yes.</p> <p>23 Q Including 2257A, which is kind of one of the</p> <p>24 reasons for those new regulations to have been</p> <p>25 effected --</p>
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<p>1 A Yes. I'm on salary, so if I have to work</p> <p>2 more, I work more.</p> <p>3 Q How many hours do you actually work?</p> <p>4 A 60, 70. I don't know. I'm always there.</p> <p>5 Even at home. It's a lot. I don't count. Better not</p> <p>6 to count. I just do whatever.</p> <p>7 Q And that's one of the reasons that you said</p> <p>8 you could not maintain the Daily -- the Daily Babylon</p> <p>9 site dropped off because you no longer had time?</p> <p>10 A Yeah, to devote to it.</p> <p>11 Q Do you foresee that changing?</p> <p>12 A Don't know what's going to happen. I don't</p> <p>13 know. I really don't know. I -- I hope so.</p> <p>14 Q But you don't know.</p> <p>15 A I don't know.</p> <p>16 MS. WYER: That's all I have.</p> <p>17 THE DEPONENT: Okay.</p> <p>18 MS. WYER: Thank you.</p> <p>19 MS. BAUMGARDNER: I have a few follow-up</p> <p>20 questions.</p> <p>21 I don't think they'll be long, but how are</p> <p>22 you doing?</p> <p>23 THE REPORTER: I'm okay.</p> <p>24 MS. BAUMGARDNER: Like I said, I don't think</p> <p>25 it will take long.</p>	<p>1 A Yeah.</p> <p>2 Q -- that now applies to simulated sexually</p> <p>3 explicit conduct; correct?</p> <p>4 A Uh-huh.</p> <p>5 Q You have to answer verbally.</p> <p>6 A Yeah.</p> <p>7 Q Yes. Okay. And you do know that both the</p> <p>8 statutes make it unlawful for any person to fail to</p> <p>9 create or maintain the records as required by the</p> <p>10 regulations, do you not? Is that your</p> <p>11 understanding?</p> <p>12 A That is.</p> <p>13 Q Okay. And so when we talk about what the</p> <p>14 regulations require, Ms. Wyer asked you about it's not</p> <p>15 particularly onerous or you would expect to get photo</p> <p>16 IDs from people as part of the process of creating</p> <p>17 sexual explicit expression; correct?</p> <p>18 A I'm sorry. What is the question?</p> <p>19 Q Ms. Wyer had asked you, you know, you</p> <p>20 didn't -- whether you thought it was onerous or</p> <p>21 unreasonable to require producers of sexually explicit</p> <p>22 expression to collect IDs from people.</p> <p>23 A Uh-huh.</p> <p>24 Q Is that correct?</p> <p>25 A Correct.</p>

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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Free Speech Coalition, )  
et al., )  
Plaintiffs, )  
vs. ) Case No.: 02:09-4607  
Eric Holder, )  
Defendant. )

Deposition of David Levingston, a plaintiff  
herein, called by the defendant for  
cross-examination pursuant to the Federal Rules of  
Civil Procedure, taken before Karen A. Toth, RPR  
and Notary Public in and for the State of Ohio, at  
the offices of Berkman, Gordon, Murray & DeVan,  
55 Public Square, Suite 2200, Cleveland, Ohio 44113,  
on Tuesday, March 26, 2013, commencing at 11:56 a.m.

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Trial Attorney  
U.S. Department of Justice  
20 Massachusetts Avenue, NW  
Washington, DC 20530

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## DAVID LEVINGSTON

Of lawful age, being first duly sworn, as  
hereinafter certified, was examined and testified as  
follows:

## CROSS-EXAMINATION

By Mr. Bladuelli:

Q Good afternoon, Mr. Levingston.

A Good afternoon.

Q My name is Hector Bladuelli. I'm an attorney  
for the government in this lawsuit. Have you  
been deposed before?

A No, I haven't.

Q Okay. Well, the purpose of this deposition,  
as probably counsel has explained to you, is  
for us to learn more about your claim. It's  
not to discuss the merits of your claim.

We have a court reporter here and it's  
very important that for every question that I  
ask you you give a verbal response yes or no  
and an explanation instead of a nod that could  
not be transcribed.

A I understand.

Q I'm going to be asking you several questions.  
If you don't understand a question that I ask  
you please tell me and I'll try to rephrase.

1 (Pages 1 to 4)

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<p>1 I'll try to make it clearer.</p> <p>2 A All right.</p> <p>3 Q Your counsel may make some objections to some</p> <p>4 of my questions. Those objections are to</p> <p>5 preserve them for trial or to contest</p> <p>6 something about the question.</p> <p>7 A Yes.</p> <p>8 Q Unless she instructs you not to answer though,</p> <p>9 you can answer the question based on her</p> <p>10 objection.</p> <p>11 I understand that you had eye surgery</p> <p>12 last week; is that correct?</p> <p>13 A Yes, I did.</p> <p>14 Q Did it go well?</p> <p>15 A Still figuring it out, but yes. I had</p> <p>16 cataract surgery so now I can see better than</p> <p>17 I have since sixth grade. But I'm adapting to</p> <p>18 reading glasses which I've never used before.</p> <p>19 Q Did that surgery in any way impair your</p> <p>20 ability to recollect events in the past?</p> <p>21 A No.</p> <p>22 Q Did that eye surgery in any way affect your</p> <p>23 ability to understand my questions?</p> <p>24 A No.</p> <p>25 Q Any other medical condition that you suffer</p>	<p>1 Q Did you review any documents in preparation</p> <p>2 for this deposition?</p> <p>3 A No, I didn't.</p> <p>4 Q Okay.</p> <p>5 MS. BAUMGARDNER: One of the things,</p> <p>6 David, Hector would probably remind you is</p> <p>7 wait until he finishes his question completely</p> <p>8 because it makes it difficult for the court</p> <p>9 reporter when you are talking at the same</p> <p>10 time.</p> <p>11 THE WITNESS: Right.</p> <p>12 MR. BLADUELL: Thank you, counsel.</p> <p>13 Q Mr. Levingston, would you please describe your</p> <p>14 educational background?</p> <p>15 A My educational background?</p> <p>16 Q Yes.</p> <p>17 A I have a Bachelor's of Science Degree in</p> <p>18 journalism from Ohio University. Did a couple</p> <p>19 years of graduate work in sociology before I</p> <p>20 came to my senses and went and got a real</p> <p>21 job. But that's the basics past high school</p> <p>22 education.</p> <p>23 Q At what university did you take sociology</p> <p>24 courses?</p> <p>25 A Ohio University.</p>
Page 6	Page 8
<p>1 from that would impair your ability to answer</p> <p>2 my questions?</p> <p>3 A No.</p> <p>4 Q No medication -- you're currently under no</p> <p>5 medications that would --</p> <p>6 A Thyroid pills.</p> <p>7 Q But they would not affect your ability to</p> <p>8 recall events?</p> <p>9 A Right.</p> <p>10 Q Now, you understand that you have taken an</p> <p>11 oath to tell the truth today?</p> <p>12 A I do.</p> <p>13 Q Do you have any questions before we begin the</p> <p>14 deposition?</p> <p>15 A No, I don't.</p> <p>16 Q Can you please state your full name for the</p> <p>17 record?</p> <p>18 A David Bertram Levingston.</p> <p>19 Q And did you prepare for this deposition today?</p> <p>20 A Yes.</p> <p>21 Q How did you prepare for the deposition today?</p> <p>22 A I just talked with my attorney.</p> <p>23 Q Okay. Did you make any notes preparing for</p> <p>24 this deposition?</p> <p>25 A No.</p>	<p>1 Q You have not received any medical training</p> <p>2 throughout your career?</p> <p>3 A No. Other than first aid or something like</p> <p>4 that, first aid training, Red Cross stuff. I</p> <p>5 used to do mountain climbing so I paid a lot</p> <p>6 of attention to first aid training.</p> <p>7 Q And could you describe your work history after</p> <p>8 you graduated from college?</p> <p>9 A Well, I'd like to start earlier than that</p> <p>10 because I actually started working as a</p> <p>11 newspaper photographer when I was 16 years old</p> <p>12 and worked at several newspapers while I was</p> <p>13 in college. And during that time I was also</p> <p>14 drafted and spent a couple years in the Army</p> <p>15 in the bad old days when we had a draft. And</p> <p>16 then went to college and did the degree in</p> <p>17 journalism, which was really a photojournalism</p> <p>18 program that wasn't formally established at</p> <p>19 that time. So it combined photography courses</p> <p>20 and journalism courses.</p> <p>21 Then I got a job after the time in grad</p> <p>22 school with the federal government in</p> <p>23 Columbus, Ohio as a photojournalist and did</p> <p>24 that for five years. Got a job at an Air</p> <p>25 Force base as an editor of a base newspaper</p>

2 (Pages 5 to 8)

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<p>1 and within a year of that I was promoted to</p> <p>2 the chief of the public affairs office for</p> <p>3 that Air Force base, Newark Air Force Base in</p> <p>4 Ohio. And had that job for about 15 years, at</p> <p>5 which time the base wound up on the base</p> <p>6 closure list and I went through the base</p> <p>7 closure and did the -- was responsible for</p> <p>8 communicating the impact of all of that to all</p> <p>9 of the workers at the base.</p> <p>10 I considered that the high point of my</p> <p>11 career because we had no suicides and no</p> <p>12 workplace violence, which is almost unheard of</p> <p>13 in base closures. And I'd like to take at</p> <p>14 least a tiny bit of the credit for that, for</p> <p>15 my communication work.</p> <p>16 When the base closed the work --</p> <p>17 Q What year did the base close?</p> <p>18 A '96.</p> <p>19 Q Okay.</p> <p>20 A At that time my work had been noticed and I</p> <p>21 was offered a job at Wright-Patterson Air</p> <p>22 Force Base at the headquarters for Air Force</p> <p>23 material command.</p> <p>24 Q When you say your work was noticed, what kind</p> <p>25 of work?</p>	<p>1 Q Do you receive a pension from your government</p> <p>2 service?</p> <p>3 A I do.</p> <p>4 Q And is that pension the bulk of your income?</p> <p>5 A Yes.</p> <p>6 Q Do you receive any income from your</p> <p>7 photography work?</p> <p>8 A I seldom net anything out of it. I do</p> <p>9 occasionally sell prints but not to where it's</p> <p>10 adding any significant income.</p> <p>11 Q Okay. Would you say that it's less than five</p> <p>12 percent of your income?</p> <p>13 A Yes.</p> <p>14 Q And do you live in Springfield, Ohio?</p> <p>15 A Yes, I do.</p> <p>16 Q Do I have that right? Okay. Are you married?</p> <p>17 A Yes, I am.</p> <p>18 Q How long have you been married for?</p> <p>19 A This time?</p> <p>20 Q Yeah.</p> <p>21 A 18 years. It will be 18 years in July.</p> <p>22 Q And you were married before?</p> <p>23 A Yes.</p> <p>24 Q Okay. Do you have children?</p> <p>25 A Yes.</p>
Page 10	Page 12
<p>1 A The work at Newark Air Force Base as chief of</p> <p>2 the public affairs office. The work</p> <p>3 particularly in the base closure.</p> <p>4 There were -- they saw that I did a</p> <p>5 good job there and offered me the job at</p> <p>6 Wright-Patterson where I was -- most of the</p> <p>7 time I was there I was deputy chief for media</p> <p>8 relations for Air Force Material Command. And</p> <p>9 then I retired from there when I hit</p> <p>10 retirement eligibility and have been retired</p> <p>11 for five and a half years now.</p> <p>12 Q Okay. So you retired in around 2007 or 2006?</p> <p>13 A It was beginning of November and it will be</p> <p>14 six years this coming year. Math is not my</p> <p>15 strong point.</p> <p>16 Q And since your retirement what have you been</p> <p>17 doing?</p> <p>18 A Photography. And I also did photography</p> <p>19 during all of that time. In fact, I had a</p> <p>20 portrait studio for a while during the time I</p> <p>21 was working at the Newark Air Force Base and</p> <p>22 never -- I'm a photographer first and all</p> <p>23 these other things were just jobs. So I've</p> <p>24 always done photography. Since retirement</p> <p>25 it's been what I do to stay busy.</p>	<p>1 Q How many?</p> <p>2 A Three.</p> <p>3 Q And how old are you?</p> <p>4 A I am, let's see, 61 now, yeah.</p> <p>5 Q How did your interest in photography develop?</p> <p>6 A How did it develop? I discovered it when I</p> <p>7 was a sophomore in high school and was so</p> <p>8 excited by it that I checked an encyclopedia</p> <p>9 of photography out of the library and read it</p> <p>10 all the way through, taught myself to develop</p> <p>11 film and make prints and all that sort of</p> <p>12 thing. And then very shortly after that at</p> <p>13 the age of 16 I walked into a local daily</p> <p>14 newspaper and they hired me. So from there I</p> <p>15 was a photographer intern for a while and</p> <p>16 became a photographer that way.</p> <p>17 Q So you've been a photographer for a long time?</p> <p>18 A Yes.</p> <p>19 Q Would it be accurate to say that it's been 30</p> <p>20 years?</p> <p>21 A More than that.</p> <p>22 Q 40?</p> <p>23 A 40 professionally. I started -- I started my</p> <p>24 first job as a photographer in 1968.</p> <p>25 Q How much would you say you make a year making</p>

3 (Pages 9 to 12)

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<p>1 photography, if you had to put a dollar amount</p> <p>2 on it?</p> <p>3 A It varies a lot. I think last year I had</p> <p>4 about four or \$500 in print sales. It used to</p> <p>5 be more before the economy crashed. All of a</p> <p>6 sudden the collectors stopped buying.</p> <p>7 Q Now, from that four or 5,000 --</p> <p>8 A Hundred.</p> <p>9 Q Four or 500?</p> <p>10 A Hundred, yes.</p> <p>11 Q And is that five percent of your income?</p> <p>12 A No.</p> <p>13 Q No. So is that more?</p> <p>14 A Less.</p> <p>15 Q Less. Okay. So this 400 and \$500,000 in</p> <p>16 photography is much less than your government</p> <p>17 pension?</p> <p>18 A \$400.</p> <p>19 Q 400. I'm sorry.</p> <p>20 MS. BAUMGARDNER: I was going to</p> <p>21 object.</p> <p>22 Q I'm sorry. \$400?</p> <p>23 A Yes.</p> <p>24 Q Okay.</p> <p>25 A It's not a significant source of income.</p>	<p>1 A I don't know.</p> <p>2 Q Would you say that it was 90 percent?</p> <p>3 A No.</p> <p>4 Q Less than 20 percent?</p> <p>5 A Yes.</p> <p>6 Q And I understand you have one publication?</p> <p>7 A One?</p> <p>8 Q Publication.</p> <p>9 A I have many publications.</p> <p>10 Q Could you just let me know, can you tell me</p> <p>11 your publications?</p> <p>12 A Well, my work has been published since 1968 in</p> <p>13 many different places. Are you referring to</p> <p>14 the one book that I've published?</p> <p>15 Q Yes.</p> <p>16 A Yes, I have self-published one book.</p> <p>17 Q Okay. And that's "The Figure in Nature"?</p> <p>18 A Yes.</p> <p>19 Q Mr. Levingston, do you produce videos?</p> <p>20 A No. Well, I guess I should qualify that. I</p> <p>21 actually have worked on a couple videos that</p> <p>22 haven't been published, although an early</p> <p>23 version of one is available on YouTube right</p> <p>24 now.</p> <p>25 Q You don't produce any sexually explicit</p>
Page 14	Page 16
<p>1 Q Okay. Now, from those 400 to \$500 how much of</p> <p>2 that is production of sexually explicit</p> <p>3 material?</p> <p>4 MS. BAUMGARDNER: Objection as to time</p> <p>5 frame.</p> <p>6 Q Well, you said last year you made 400 to \$500</p> <p>7 in selling photography, correct?</p> <p>8 A Yes.</p> <p>9 Q And how much of that from last year was</p> <p>10 sexually explicit material?</p> <p>11 A None.</p> <p>12 Q None?</p> <p>13 A Because when 2257(a) took effect I stopped</p> <p>14 doing anything that might fall under 2257(a).</p> <p>15 Q Okay. You produced sexually explicit material</p> <p>16 from 2005 to 2009, correct?</p> <p>17 A Some.</p> <p>18 Q Some, yeah?</p> <p>19 A Very small amount.</p> <p>20 Q Okay. And what percentage of the income that</p> <p>21 you got in photography during those years</p> <p>22 would you say was production of sexually</p> <p>23 explicit material?</p> <p>24 MS. BAUMGARDNER: Objection. You can</p> <p>25 go ahead and answer if you know.</p>	<p>1 videos?</p> <p>2 A No.</p> <p>3 Q Could you describe how your photographic work</p> <p>4 has evolved since 1968 in terms of the context</p> <p>5 of the photography that you take and that kind</p> <p>6 of thing?</p> <p>7 A I'd like to think it's gotten better but I</p> <p>8 don't know that my interests have changed</p> <p>9 significantly from the beginning.</p> <p>10 I've always been interested in</p> <p>11 documentary work, reported or reportage, that</p> <p>12 sort of thing, and still occasionally I have</p> <p>13 several projects along those lines that I'm</p> <p>14 working on right now.</p> <p>15 And I started as a teenager. I was</p> <p>16 interested in women and have always one way or</p> <p>17 another photographed women. I think that has</p> <p>18 evolved into a more sophisticated product in</p> <p>19 later years.</p> <p>20 Q Would you say that photographing women has</p> <p>21 been the bulk of your photography work</p> <p>22 throughout your career?</p> <p>23 A Not throughout but in the -- since 2002 it has</p> <p>24 been.</p> <p>25 Q Okay. And what was your photographic work</p>

4 (Pages 13 to 16)



Page 17	Page 19
<p>1 before you started concentrating on women?</p> <p>2 A Photojournalism, portraits, weddings, anything</p> <p>3 for a buck at my studio.</p> <p>4 Q So since 2002 have you done any photographic</p> <p>5 work for newspapers?</p> <p>6 A Yes. I also photograph dance and some of</p> <p>7 those dance photographs have been published in</p> <p>8 newspapers in connection with the productions</p> <p>9 that I was photographing.</p> <p>10 I'm trying to think what else has been</p> <p>11 -- for a while in the late '90s and beginning</p> <p>12 of the 2000s I worked for some magazines,</p> <p>13 beauty magazines that you would have bought at</p> <p>14 CVS or Walgreens and did content for those</p> <p>15 magazines at my studio.</p> <p>16 Q And how much of that -- what proportion of</p> <p>17 your photographic work involves selling the</p> <p>18 pictures to magazines and newspapers?</p> <p>19 A Today, none.</p> <p>20 Q None?</p> <p>21 A Yeah. I'm semi-retired from that kind of</p> <p>22 work.</p> <p>23 Q From the photo -- from photojournalism, or</p> <p>24 what do you mean by that kind of work?</p> <p>25 A Well, I don't seek those kind of assignments.</p>	<p>1 I'll never forget the day I misspelled</p> <p>2 Pittsburgh in a story and two of the editors</p> <p>3 were from Pittsburgh. And I've never</p> <p>4 misspelled Pittsburgh from that day.</p> <p>5 The point of all this is there was a</p> <p>6 culture and environment in those newsrooms</p> <p>7 that doesn't exist today as newspapers are</p> <p>8 fading. So my project is traveling around,</p> <p>9 photographing and interviewing the people who</p> <p>10 worked in that kind of a newsroom and getting</p> <p>11 their stories captured on tape and pictures of</p> <p>12 them. And those are being produced on a blog</p> <p>13 that I've set up where you can actually listen</p> <p>14 to the whole interview, see the portrait of</p> <p>15 the person and read a few quotes from the</p> <p>16 interview.</p> <p>17 Q Is it accurate to say that that's not going to</p> <p>18 involve any nudes?</p> <p>19 A Yes.</p> <p>20 Q Or sexually explicit?</p> <p>21 A Right, nothing there. And the same with the</p> <p>22 other project. These are not --</p> <p>23 Q The funeral and the newsrooms or the two</p> <p>24 projects, right?</p> <p>25 A No, no, this project is about the people who</p>
Page 18	Page 20
<p>1 The magazine industry has gone down the tubes</p> <p>2 so there is very little work there and I've</p> <p>3 decided not to waste my time pursuing the</p> <p>4 little bit of work that remains. So as I</p> <p>5 said, I do documentary work. And I have two</p> <p>6 major projects that I expect to take a decade</p> <p>7 that I'm working on now that are documentary</p> <p>8 in nature.</p> <p>9 Q Can you explain these projects?</p> <p>10 A If you wish. There are two. One was inspired</p> <p>11 by going to a lot of funerals. I'm an old</p> <p>12 newspaper guy and a lot of my old friends from</p> <p>13 the newspaper days are dying. I realized at</p> <p>14 the most recent funeral that I'm the only one</p> <p>15 left from that crew that I started out with in</p> <p>16 1968 so I can make up any stories I want about</p> <p>17 those days and no one can contradict me.</p> <p>18 But I started in newspapers when there</p> <p>19 were linotype machines setting type with hot</p> <p>20 lead and there were guys with green eye shade,</p> <p>21 garters on their shirt sleeves who know</p> <p>22 everything. They knew more than Google. And</p> <p>23 they would -- when you made a mistake it was</p> <p>24 not just corrected, you were stood up in</p> <p>25 public, humiliated in the newsroom.</p>	<p>1 are dying, trying to get them before they die.</p> <p>2 Q Okay.</p> <p>3 A The other project is photographers today as a</p> <p>4 reaction to -- well, some of them as a</p> <p>5 reaction to digital photography. There are</p> <p>6 many photographers who are starting to use</p> <p>7 antiquated photographic processes like the wet</p> <p>8 plate process or platinum plating printing.</p> <p>9 And the second project involves -- it's a</p> <p>10 similar project -- interviewing, photographing</p> <p>11 and putting up on a blog those people where</p> <p>12 they can talk about why they use a process</p> <p>13 that was invented in the 1850s today where</p> <p>14 they have to make all their own materials.</p> <p>15 And I'm just getting started on that.</p> <p>16 I have a blog set up but there is</p> <p>17 nothing on it yet. I've done a few interviews</p> <p>18 and I'm trying to work on that and this whole</p> <p>19 eye surgery thing has thrown my schedule out</p> <p>20 of whack.</p> <p>21 But again, non one is going to be</p> <p>22 getting naked for those. It's a different</p> <p>23 kind of a project.</p> <p>24 Q Why have you decided to -- I assume you've</p> <p>25 said -- let me rephrase that.</p>

5 (Pages 17 to 20)

Page 21	Page 23
<p>1 You have decided to switch the scope 2 of your work from nudes to these kind of 3 projects; is that accurate? 4 MS. BAUMGARDNER: Objection. Go ahead 5 and answer. 6 A Okay. Not really. 7 Q Okay. 8 A I've been looking for -- well, nudes have 9 never been everything. They've been a major 10 thing for ten years, coming up on 11 years 11 now. And I'm starting to feel like I've kind 12 of done what I set out to do with that, but 13 I'm not done with it. It's still something 14 I'm interested in and I'll probably, you know, 15 be 90 years old and barely able to lift a 16 camera and still do nudes because it's 17 important. It's a significant part of what my 18 personal vision is about. 19 But there has always been other things 20 too. And I -- I discovered "The Figure in 21 Nature" in 2002, realized it was the thing 22 that I was put on this planet to do and have 23 spent ten years, 11 years focused on doing 24 that. 25 I've achieved quite a bit and have a</p>	<p>1 A Well, yes. 2 Q Yes. Okay. 3 A Yeah. Nothing specific. You know, I have a 4 model coming into the studio on Thursday to 5 work on some different lighting techniques 6 that may lead to something I'll do in the 7 studio, but I never know. My process is take 8 pictures and see what happens. 9 Q Other than that project do you have anything 10 planned for the rest of the year regarding 11 nudes? 12 A Nothing specific. I'll be making a trip to 13 Philadelphia I understand at some point 14 beginning of June. I may make that a long 15 road trip and stop and take some pictures 16 along the way. There are some people in 17 Pennsylvania who want to work with me, so 18 yeah. 19 Q Other than that nothing comes to mind at this 20 point? 21 A Nothing specific at this point. There will be 22 other things that I'll do as the year moves 23 along but it tends to be more of a spur of the 24 moment thing. I'll be doing road trips for 25 these other projects that will probably take</p>
Page 22	Page 24
<p>1 significant body of work in that genre now. 2 But I've always done other things too. And I 3 kind of felt like it's time to do some 4 different things. 5 I've always done dance photography. 6 That's an important thing for me. I spend a 7 lot of time photographing a dance production. 8 I don't photograph it like basketball. I go 9 to the rehearsals, I learn the dance and then 10 I try to make my photographs say something 11 about the dance. So it's a thoughtful 12 process. 13 Q When you say you have things that you still 14 want to do in nude photography, what is it 15 that you want to do that is missing from the 16 work that you've done? 17 A You're talking about the nudes? 18 Q Yeah. 19 A I don't know. That's something that evolves 20 and I never -- I experiment. I try things. I 21 wander around in the woods with a model and 22 look for a place to take a picture. I don't 23 plan. 24 Q So you don't have any concrete projects this 25 year to do nudes?</p>	<p>1 me near people who want to work with me, so 2 that may result in nude shoots as well as the 3 other things that I'll be doing. 4 Q So have you identified those people that are 5 going to be close to the places that you're 6 going to go? 7 A No, I haven't. 8 Q Your non-nude photography, where has it been 9 published? 10 A Oh, let's see. Start with the Newark Advocate 11 in Newark, Ohio; the Athens Messenger in 12 Athens, Ohio; the Associated Press, I 13 worked -- you know, I've worked with them. 14 Let's see. I've had work exhibited in Europe 15 and, you know, with the one contest you were 16 published in books in Europe in the '70s. 17 It's been a long time. 18 There is many, many places. The 19 magazines, what were the names of those 20 magazines? They changed the name all the 21 time. I can't even remember now. "Beauty 22 Handbook" I think was one of the names. They 23 published a bunch of different magazines. 24 They had a version for the Hispanic audience. 25 They had just all sorts of different things.</p>

6 (Pages 21 to 24)

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1 Then when the market started disappearing they  
2 started firing everybody and folding all those  
3 magazines up and I've lost track of them. But  
4 those are some places. There are many  
5 others.

6 I get published -- well, you asked for  
7 non-nudes but most of the publications over  
8 the past decade have been in places that  
9 publish my nude work.

10 Q So you said that your nude work was your --  
11 what you think is your call in this life; is  
12 that correct?

13 A Yes. As an artist.

14 Q As an artist. Would it be accurate to say  
15 that that has been a really substantial  
16 proportion of your work --

17 A For the past --

18 Q -- in photography?

19 A For the past ten years it's been a  
20 substantial -- it's been the bulk of the work.

21 Q So you would say 80 percent?

22 A Are you talking about during the past ten  
23 years?

24 Q During the past ten years.

25 A Yes, I would say 80 percent would be good.

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1 Q Do you sell your nudes?

2 A Yes.

3 Q And how do you sell them?

4 A Through galleries for the most part, or  
5 through various shows that -- juried shows  
6 where you enter the show and if you're  
7 accepted, those prints are available for  
8 sale. And several of those shows also will  
9 have a store where I make smaller prints and  
10 send a quantity of the prints into the store  
11 and sell them out of the store at the event.

12 Q Well, last year when you said that you made  
13 400 and \$500 in photography was that from  
14 nudes; do I understand that correctly?

15 A Yes. It might have been -- I think there was  
16 a 50 buck thing from a newspaper in there.  
17 It's from a dance photograph.

18 Q And if I ask you the year before last year  
19 would the answer be the same, 400 to 500?

20 A Something like that.

21 Q So has it been that much pretty consistently  
22 since you started concentrating in nudes?

23 A It's hard. I think I used to make more than  
24 that before the economy went in the toilet.

25 Q More than a thousand a year would you say?

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1 A Rarely. Yeah.

2 Q So around a thousand?

3 A Yeah. It's not been a -- I've never done this  
4 for money.

5 Q I understand.

6 A That's not the motivating factor anyway. It  
7 would be nice but it doesn't happen. I have  
8 hopes that some day there'll be more income  
9 from it.

10 Q And can you tell me the web sites where your  
11 nude work has appeared?

12 A Not off the top of my head. I don't memorize  
13 URLs.

14 Q Any web sites that you can remember right now?

15 A Well, I think we provided some of those,  
16 haven't we? I have a portfolio on Model  
17 Mayhem. I have one on Deviant Art. I rarely  
18 change anything on there. Of course, I have  
19 my own web site.

20 Q Okay.

21 A Davelevingston.com. And that's where I --  
22 most of my work is available on the web. I  
23 know there is other places out there that have  
24 my work and there are places that steal my  
25 work and put it on the web too.

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1 Q Can you explain how you get women to pose  
2 naked or do nudes for you?

3 A Yeah. Well, I hesitate to tell this story  
4 because I'm under oath but what I usually --  
5 the answer I usually give to that question is  
6 that if you go hiking in the woods, you know,  
7 they are out there, you just have to know  
8 where to look. It's like hunting mushrooms.  
9 That's not true.

10 MS. BAUMGARDNER: I was going to say, I  
11 think you want to answer the question.

12 A In general most frequently they come to me. I  
13 have a reputation for the work that I do.  
14 Models who are interested in the work that I  
15 do will seek me out and ask to be part of it.  
16 I do look for models on Model Mayhem which is  
17 why I'm on that site.

18 Generally I'll look for a model that is  
19 an experienced nude model, that has examples  
20 of work similar to the kind of work that I  
21 do. Particularly when I'm traveling, if I'm  
22 looking for a model in a location that I'm  
23 going to be visiting I'll look for models in  
24 that location who have a track record of doing  
25 the kind of work that I do and contact them to

7 (Pages 25 to 28)

Page 29	Page 31
<p>1 see if they're interested in working for me.</p> <p>2 Q Do the models pay you to photograph them?</p> <p>3 A We don't exchange money. I should probably</p> <p>4 say I do -- I have several policies about</p> <p>5 money with models. They aren't allowed to</p> <p>6 spend money in order to work with me, so if</p> <p>7 we're working together and there are any</p> <p>8 expenses that come up I cover those expenses.</p> <p>9 And the other thing is I consider my</p> <p>10 models to be co-creators of the work that I do</p> <p>11 so I share copyright with them. They get all</p> <p>12 the pictures and full rights to do anything</p> <p>13 they want with the pictures.</p> <p>14 Q What do you look for in a model?</p> <p>15 A It might surprise you that physical things are</p> <p>16 not significant. I look for a model who is</p> <p>17 reasonably attractive, has a reasonably fit</p> <p>18 body. And the main thing I'm looking for is</p> <p>19 someone who gets what I'm trying to do and</p> <p>20 wants to be a part of it. Those are -- I'm</p> <p>21 looking for someone that is actually committed</p> <p>22 to making art and interested in the nude as</p> <p>23 art and likes what it is that I do in that</p> <p>24 regard and wants to be part of it. That's</p> <p>25 more significant than pretty much anything</p>	<p>1 started concentrating on that?</p> <p>2 A How many models? Wow. I don't know.</p> <p>3 Q 10,000?</p> <p>4 A No.</p> <p>5 Q Okay. 5,000?</p> <p>6 A No.</p> <p>7 Q A thousand.</p> <p>8 A No.</p> <p>9 Q Less?</p> <p>10 A Less.</p> <p>11 Q 500?</p> <p>12 A I'm sure it's less than 500 but I don't know</p> <p>13 how much lower I can go and be confident with</p> <p>14 it.</p> <p>15 Q Let's say 250?</p> <p>16 A It's possible that many.</p> <p>17 Q Okay.</p> <p>18 A Yeah. I don't keep track of that.</p> <p>19 Q It could be less than 250?</p> <p>20 A It could be less.</p> <p>21 Q And out of those 250, like ten have been</p> <p>22 grandmothers?</p> <p>23 MS. BAUMGARDNER: Objection.</p> <p>24 A I don't know. I really don't know.</p> <p>25 Q But it -- has it been more than ten?</p>
Page 30	Page 32
<p>1 else.</p> <p>2 Q Is youth important for a model?</p> <p>3 A Not significantly, no. I work with models of</p> <p>4 all ages as long as they are reasonably fit.</p> <p>5 Q Okay. Have you ever worked with a model</p> <p>6 that's a grandmother?</p> <p>7 A Yes.</p> <p>8 Q How many would you say?</p> <p>9 A I don't know. Several. I have one model that</p> <p>10 I've worked with quite a bit who is in her</p> <p>11 late 60s.</p> <p>12 Q Okay. Other than her, anyone else?</p> <p>13 A There are several in their late 40s, 50s,</p> <p>14 Q That are grandmothers?</p> <p>15 A Yeah, I think several of them have grandkids,</p> <p>16 yeah.</p> <p>17 Q Would you say you've worked with ten that are</p> <p>18 grandmothers?</p> <p>19 A Somewhere around there maybe. I can't -- you</p> <p>20 know, it's not something I track.</p> <p>21 Q Right.</p> <p>22 A I may not know if they are a grandmother or</p> <p>23 not.</p> <p>24 Q And how many models in your nude work would</p> <p>25 you say you've worked with since 2002 when you</p>	<p>1 MS. BAUMGARDNER: Objection.</p> <p>2 A I don't know. Don't know. Can't answer the</p> <p>3 question. I really just don't know.</p> <p>4 Q Has it been -- do you recall if they have been</p> <p>5 a substantial amount of those 250?</p> <p>6 A No.</p> <p>7 MS. BAUMGARDNER: Objection.</p> <p>8 A I just don't know.</p> <p>9 Q Okay. Would it be accurate to say that most</p> <p>10 of your models have not been grandmothers?</p> <p>11 A Yes.</p> <p>12 Q Have most of your models been mothers?</p> <p>13 MS. BAUMGARDNER: Objection. You can</p> <p>14 go ahead and answer if you know.</p> <p>15 A Many. I don't know.</p> <p>16 Q Well, more than 50 percent?</p> <p>17 A I would say 50 percent might be a good</p> <p>18 number. Might be higher than that.</p> <p>19 Q Of mothers?</p> <p>20 A Yeah.</p> <p>21 Q You said you don't -- do you keep records</p> <p>22 documenting if they have children, the models?</p> <p>23 A No.</p> <p>24 Q Do you ask them?</p> <p>25 A No. I guess to understand you need to know</p>

8 (Pages 29 to 32)



Page 53	Page 55
<p>1 A Right.</p> <p>2 Q Mr. Levingston, have some of the models that</p> <p>3 you have photographed nude been college</p> <p>4 students in the last ten years?</p> <p>5 A Yes.</p> <p>6 Q How many have been college students?</p> <p>7 A I have no way of knowing. I can't answer that</p> <p>8 question.</p> <p>9 Q Okay. Would you say that more than ten</p> <p>10 percent have been college students?</p> <p>11 MS. BAUMGARDNER: Objection.</p> <p>12 A I don't know. I really don't know.</p> <p>13 Q Can you think of women who have -- you've</p> <p>14 photographed that have been college students?</p> <p>15 A Yes.</p> <p>16 Q Okay. Can you give me their names?</p> <p>17 A No.</p> <p>18 Q Can you give me their initials?</p> <p>19 A Yes. Some of them. Let's see. G. Doesn't</p> <p>20 use a last name.</p> <p>21 Q And where was she a college student?</p> <p>22 A I'm not going to provide that.</p> <p>23 Q Name of the university?</p> <p>24 A If I think it gets into the privacy of the</p> <p>25 model that's not something I'm comfortable</p>	<p>1 Q Okay. So by my calculation it's six?</p> <p>2 A That's not all, that's just all I can recall</p> <p>3 off the top of my head.</p> <p>4 Q There is many more?</p> <p>5 A Yes, there is some more.</p> <p>6 Q Ten more?</p> <p>7 A Probably.</p> <p>8 Q 20?</p> <p>9 A Maybe.</p> <p>10 Q More than -- no more than 50?</p> <p>11 A Probably not.</p> <p>12 Q Okay. Is it accurate to say that more of your</p> <p>13 models have been college students than 50 year</p> <p>14 olds --</p> <p>15 MS. BAUMGARDNER: Objection.</p> <p>16 Q -- of your nude models in the last ten years?</p> <p>17 A Yes.</p> <p>18 MS. BAUMGARDNER: And again, this is</p> <p>19 nude, correct?</p> <p>20 MR. BLADUELL: Nude. All nude.</p> <p>21 A But not erotic?</p> <p>22 Q Well --</p> <p>23 A I think we need to make that distinctions.</p> <p>24 Q We'll get to that.</p> <p>25 Have you recruited some models in</p>
Page 54	Page 56
<p>1 talking about.</p> <p>2 Q Do you have a real concern that I can find out</p> <p>3 her name by you giving me the university?</p> <p>4 A I think it is reaching a point where I'm -- I</p> <p>5 would be revealing more information than I'm</p> <p>6 comfortable about the background and life of</p> <p>7 my models, yes.</p> <p>8 Q Okay. Well, do you know their date of birth?</p> <p>9 A Not off the top of my head.</p> <p>10 Q All right. So can you give me another college</p> <p>11 student?</p> <p>12 A GA. Again, I'm having a hard time -- I'm a</p> <p>13 visual person. I can see them but getting</p> <p>14 their name to come up is a --</p> <p>15 Q You can just tell me when you remember someone</p> <p>16 visually, you tell me one, two and then --</p> <p>17 A Okay. There is one. Another one.</p> <p>18 Q So we have two already?</p> <p>19 A Three.</p> <p>20 Q We have three.</p> <p>21 A Trying to think of some others. Yeah, there</p> <p>22 is another one. Another one. Another one. I</p> <p>23 can give you initials on a few of those that</p> <p>24 I've thought of now. One of them was BL, KD,</p> <p>25 C, HH. I don't know.</p>	<p>1 college campuses?</p> <p>2 A No.</p> <p>3 Q Where have you recruited nude models?</p> <p>4 A I don't recruit models.</p> <p>5 Q So is my understanding correct that all of</p> <p>6 these college students who have appeared in</p> <p>7 your nudes have contacted you?</p> <p>8 A Or I contacted them through Model Mayhem where</p> <p>9 they had modeling portfolios.</p> <p>10 Q Okay.</p> <p>11 A Or there might have been other model sites as</p> <p>12 well as Model Mayhem. There are older sites</p> <p>13 that did that.</p> <p>14 Q So online, online modeling sites?</p> <p>15 A For the most part, yeah.</p> <p>16 Q Okay. So you've never reached out to a model</p> <p>17 that's college age? Have you reached out to a</p> <p>18 model that is college age through Model Mayhem</p> <p>19 or any of these other sites?</p> <p>20 A Yes.</p> <p>21 Q Have some of your models been high school</p> <p>22 students?</p> <p>23 A Not for nude work.</p> <p>24 Q Okay. Have some of your models for nude work</p> <p>25 been recent high school students?</p>

14 (Pages 53 to 56)



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<p>1 MS. BAUMGARDNER: Objection.</p> <p>2 A Very few. I mean recent, I don't -- if they</p> <p>3 are in college they are recent high school</p> <p>4 students.</p> <p>5 Q That's fair. Have you had models who have</p> <p>6 posed nude for your pictures for the last ten</p> <p>7 years who have graduated college but have not</p> <p>8 entered college -- have graduated high school</p> <p>9 but have not entered college yet?</p> <p>10 A There have been some.</p> <p>11 Q Okay. How many would you say?</p> <p>12 A I have no idea.</p> <p>13 Q Can you recall anyone specifically?</p> <p>14 A I can't even -- no.</p> <p>15 Q You cannot recall any?</p> <p>16 A No, I can't. That's not something that I</p> <p>17 would care about or think about.</p> <p>18 Q Why would you not care about it?</p> <p>19 A Well, what they are doing with their education</p> <p>20 and career is not really something I delve</p> <p>21 into to great depth.</p> <p>22 MS. BAUMGARDNER: Are you doing okay?</p> <p>23 THE WITNESS: Not right this</p> <p>24 instance but sometime before too long.</p> <p>25 MS. BAUMGARDNER: Let Mr. Bladuell</p>	<p>1 she contacted me. She's a friend. I work</p> <p>2 with her whenever I can.</p> <p>3 Q Is Kelsey Dylan her real name?</p> <p>4 A No.</p> <p>5 Q What are the initials of her real name?</p> <p>6 A KS.</p> <p>7 Q Do you know her birth -- date of birth?</p> <p>8 A Not off the top of my head, no.</p> <p>9 Q Is she a friend?</p> <p>10 A Yes.</p> <p>11 Q In the second paragraph, I'm going to read</p> <p>12 it. "She said she was going to the west coast</p> <p>13 to go to college but wanted to work with me</p> <p>14 before she left Ohio. We did a shoot"</p> <p>15 ellipses -- "a wonderful shoot that produced a</p> <p>16 bunch of keeper photographs. Then she was</p> <p>17 gone to school. But we stay in touch and work</p> <p>18 together whenever she is back in Ohio. Kelsey</p> <p>19 is a great model, beautiful and highly skilled</p> <p>20 and as with all my models she's a very nice</p> <p>21 person. I love working with her and try to</p> <p>22 shoot with her as often as I can."</p> <p>23 Mr. Levingston, did I read that</p> <p>24 accurately?</p> <p>25 A You did.</p>
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<p>1 know.</p> <p>2 MR. BLADUELL: I'm going to mark as</p> <p>3 Exhibit DL4 a document that I took from</p> <p>4 Mr. Levingston's web site. I'm going to hand</p> <p>5 a copy to counsel as soon as I can find it.</p> <p>6 (Defendant's Exhibit DL4</p> <p>7 marked for identification.)</p> <p>8 Q Mr. Levingston do you recognize that</p> <p>9 document?</p> <p>10 A Yes.</p> <p>11 Q And what is that document?</p> <p>12 A It's a print out from my blog.</p> <p>13 Q Okay. Could you read the first paragraph?</p> <p>14 A "Sometimes I find myself" --</p> <p>15 Q For yourself.</p> <p>16 A Oh, okay.</p> <p>17 Q Sorry.</p> <p>18 A Okay. Okay.</p> <p>19 Q Can you read the second paragraph to</p> <p>20 yourself. It's on the second page.</p> <p>21 A Yes.</p> <p>22 Q Do you remember this model?</p> <p>23 A Oh, yes.</p> <p>24 Q What can you tell me about this model?</p> <p>25 A She's a wonderful model, very experienced when</p>	<p>1 Q So is it correct that you worked with this</p> <p>2 model before she went to college?</p> <p>3 A Yes.</p> <p>4 Q Do you know what age she was when she went to</p> <p>5 college?</p> <p>6 A I'd have to look.</p> <p>7 Q Do you remember the year that this was -- that</p> <p>8 you first did a shoot with her?</p> <p>9 A I don't remember. Must have been five years</p> <p>10 ago. Something like that.</p> <p>11 Q So this would be -- I'm not terribly good at</p> <p>12 math either but it's --</p> <p>13 A I'm guessing.</p> <p>14 Q It's like 2009?</p> <p>15 A Probably around there.</p> <p>16 Q And that's the first time that you</p> <p>17 photographed her?</p> <p>18 A Yes.</p> <p>19 Q Did those photographs involve nudes?</p> <p>20 A Yes.</p> <p>21 Q Do you remember what age she was at the time?</p> <p>22 A No, I don't.</p> <p>23 Q So could she have been 17?</p> <p>24 A No.</p> <p>25 Q How are you sure about that?</p>

15 (Pages 57 to 60)

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1 A I did check her ID.  
 2 Q Okay. Do you have a copy of the ID?  
 3 A I believe I do.  
 4 MR. BLADUELL: Okay. I'm going to  
 5 request, counsel, to identify the ID that was  
 6 provided to us of this model Kelsey Dylan and  
 7 the associated model release.  
 8 Q Mr. Livingston, have there been other models  
 9 in Ohio like Kelsey Dylan who you have shot  
 10 nude before they go to college?  
 11 MS. BAUMGARDNER: Objection.  
 12 A Don't know. I can't really answer that.  
 13 That's not something I keep track of.  
 14 Q Is it possible?  
 15 A It's possible.  
 16 Q But you don't -- is it fair to assume that  
 17 Kelsey Dylan was around the age of 18 at the  
 18 time you first shot her nude?  
 19 MS. BAUMGARDNER: Objection.  
 20 A I don't know. I think she was older.  
 21 Q Older. So was she -- you don't know her exact  
 22 age?  
 23 A I don't know her exact age.  
 24 Q But do you recall if she was over 20 or  
 25 between 18 and 20?

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1 MS. BAUMGARDNER: Objection.  
 2 A I don't know.  
 3 Q But it's not uncommon for you to photograph  
 4 models around that age?  
 5 MS. BAUMGARDNER: Objection.  
 6 Q Right, nude?  
 7 MS. BAUMGARDNER: Objection.  
 8 A It's not common.  
 9 Q It's not common?  
 10 A Right.  
 11 Q It's more common that they are older than 20?  
 12 A Yes. Kelsey is an exceptional model and I  
 13 should mention that she had an extensive nude  
 14 portfolio online when she contacted me.  
 15 Q Do you know if those pictures were taken  
 16 before she was 18?  
 17 A I don't know when those pictures were taken.  
 18 Q Do you remember how extensive her background  
 19 was in nude photography at the time that you  
 20 first shot her?  
 21 A She was quite accomplished as a nude model.  
 22 Q Do you remember how many shoots she had?  
 23 A I would have no way of knowing.  
 24 Q Do you remember if it was more than ten?  
 25 A I would have no way of knowing how many.

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1 Q When you say accomplished, would that mean  
 2 more than five?  
 3 MS. BAUMGARDNER: Objection.  
 4 A She was highly skilled at -- I have no idea  
 5 how many shoots she had done.  
 6 Q But you reviewed some of the shoots before you  
 7 photographed her?  
 8 A I looked at her online portfolio.  
 9 Q Is my understanding correct that she contacted  
 10 you?  
 11 A Yes.  
 12 Q You didn't contact her?  
 13 A Right.  
 14 Q And did she contact you through Model Mayhem?  
 15 A I don't remember.  
 16 Q Are you still in touch with Kelsey Dylan?  
 17 A Yes, I am.  
 18 Q Do you still do regular nudes of her?  
 19 A Whenever she's around. Whenever she's  
 20 available.  
 21 Q Is she a full-time model?  
 22 A Yes, she is.  
 23 Q Does she live in Ohio?  
 24 A She travels.  
 25 Q But she doesn't permanently live in Ohio?

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1 A Her home is in Ohio but she's seldom there.  
 2 Q Were the nude pictures of Kelsey Dylan  
 3 published?  
 4 MS. BAUMGARDNER: Which nude pictures  
 5 are you talking about?  
 6 MR. BLADUELL: The first ones that  
 7 he took right after she graduated from high  
 8 school.  
 9 A They've been on my blog.  
 10 MS. BAUMGARDNER: Objection to that,  
 11 but go ahead.  
 12 A Trying to think if they've been in printed  
 13 products. They may have been but I'm not  
 14 sure.  
 15 MR. BLADUELL: Okay. I'm going to  
 16 request a sample picture, the nude of Kelsey  
 17 Dylan as well for the record.  
 18 MS. BAUMGARDNER: And you can.  
 19 A You have them right here.  
 20 Q Right, I understand that.  
 21 MR. BLADUELL: I'm requesting it and  
 22 you may object, but I just wanted to note for  
 23 the record and we can discuss it later.  
 24 MS. BAUMGARDNER: I'm going to object  
 25 as to relevance.

16 (Pages 61 to 64)

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1 A Yes.  
 2 Q Even if the statutes have been -- even if 2257  
 3 has been in place, correct?  
 4 A Yes.  
 5 Q Has 2257 prevented you from making nudes?  
 6 A No.  
 7 Q So what, your concern is 2257(a)?  
 8 A Primarily.  
 9 Q Okay. Has that prevented you from making  
 10 nudes?  
 11 MS. BAUMGARDNER: Objection.  
 12 A Some.  
 13 Q Which ones?  
 14 A Well, they weren't made so that's an  
 15 impossible question to answer.  
 16 Q Okay. Since the enactment of 2257 have you  
 17 wanted to do nudes that you decided not to do  
 18 because of the statutes?  
 19 A Yes.  
 20 MS. BAUMGARDNER: Just to clarify, you  
 21 said 2257.  
 22 MR. BLADUELL: (a).  
 23 MS. BAUMGARDNER: Okay. (a).  
 24 A Yes.  
 25 Q Can you tell me which ones?

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1 A No.  
 2 Q What projects?  
 3 A In general I have stayed away from any work  
 4 that might be conceived to fall under 2257(a,)   
 5 so despite an interest in art that would  
 6 explore human sexuality I've stayed away from  
 7 that subject matter because of this law.  
 8 Q But have you had a particular concrete project  
 9 that you wanted to do and you said oh, I'm not  
 10 going to do it because of 2257(a)?  
 11 A I don't work that way so I'd have to say no  
 12 concrete projects. Although there were ideas  
 13 for projects that were rejected.  
 14 Q Rejected by you?  
 15 A Yes.  
 16 Q When you have these ideas about projects after  
 17 2257(a), do you consult an attorney about how  
 18 to reasonably comply with the statutes and  
 19 make your projects?  
 20 A No.  
 21 Q Do you take any concrete steps to see how you  
 22 could comply with the statute and still make  
 23 your project?  
 24 A I don't believe that would be possible or I  
 25 would do the project.

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1 Q What do you mean, that it would not be  
 2 possible?  
 3 A If I'm doing a project that -- well, if I'm  
 4 thinking about a project that I feel would  
 5 fall under 2257(a) then I don't do it. If it  
 6 wouldn't fall under 2257(a) then I would  
 7 proceed with the project.  
 8 Q Okay. Why would you not do it?  
 9 A Because of the legal problems that 2257(a),  
 10 the burden that it imposes on me, my inability  
 11 to comply with the statute if I did that.  
 12 Q What are the concrete burdens, what are the  
 13 concrete impediments?  
 14 A I'm congenially unable to keep records, as you  
 15 have seen today. I would be very concerned  
 16 that whatever efforts I might make at  
 17 recordkeeping would not be adequate to satisfy  
 18 the statute if I were to try that.  
 19 Q Is it your view that any law that requires  
 20 someone to keep records would be  
 21 unconstitutional?  
 22 MS. BAUMGARDNER: Objection.  
 23 A No.  
 24 Q So why is this one in particular, the record  
 25 -- why is the recordkeeping unconstitutional?

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1 A The recordkeeping seems to me to be so complex  
 2 that I could not achieve it.  
 3 Q What is your understanding of the  
 4 recordkeeping requirement?  
 5 A It's a limited understanding but there seems  
 6 to be a bunch of cross indexing required, and  
 7 I don't know -- I don't even -- I can't even  
 8 comprehend how to do that.  
 9 Q Have you read the statute to understand the  
 10 recordkeeping requirements?  
 11 A I've read writing about the statute.  
 12 Q You haven't actually read the statutes  
 13 themselves, correct?  
 14 A I don't know. I've read portions of it.  
 15 Q Do you feel that if you read the statute that  
 16 might help you understand what the  
 17 requirements are?  
 18 A No. I've read an exposition on the statute  
 19 that was written in layman's terms that I  
 20 couldn't understand.  
 21 Q So you don't think that you would -- you  
 22 haven't read the statute, correct?  
 23 A I've read parts of it.  
 24 MS. BAUMGARDNER: Objection.  
 25 Q You read parts of the statute itself?

22 (Pages 85 to 88)

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<p>1 A Yes.</p> <p>2 Q You did not understand some of those parts,</p> <p>3 correct?</p> <p>4 A Yes.</p> <p>5 Q Which parts do you not understand?</p> <p>6 MS. BAUMGARDNER: Objection.</p> <p>7 A The recordkeeping requirements.</p> <p>8 MS. BAUMGARDNER: I mean, in fairness,</p> <p>9 if you want to show him the statute. I don't</p> <p>10 think it's fair to ask him questions when he</p> <p>11 doesn't have it in front of him.</p> <p>12 MR. BLADUELL: Well, he said that</p> <p>13 he's read it.</p> <p>14 A Read parts of it.</p> <p>15 MR. BLADUELL: I'm asking him his</p> <p>16 recollection.</p> <p>17 A And that was a while back. Frankly, in</p> <p>18 reading it I was so angry that it's hard to</p> <p>19 remember.</p> <p>20 Q So other than reading parts of it and reading</p> <p>21 articles on it have you taken any other steps</p> <p>22 to get better acquainted with this statute?</p> <p>23 MS. BAUMGARDNER: Objection.</p> <p>24 A Actually I became aware of the statute because</p> <p>25 a friend of mine who is a photographer and a</p>	<p>1 not read it before?</p> <p>2 A I don't believe so.</p> <p>3 Q I represent to you that this is a regulation</p> <p>4 passed by the Department of Justice in</p> <p>5 accordance with the Statute 2257, 2257(a).</p> <p>6 I'm going to direct your attention to Letter O</p> <p>7 in the third page.</p> <p>8 Do you see that it says simulated</p> <p>9 sexually explicit conduct means?</p> <p>10 A Yes.</p> <p>11 Q Can you just read it for yourself for a couple</p> <p>12 of seconds?</p> <p>13 A Okay.</p> <p>14 Q Do you understand it?</p> <p>15 A It seems clear as mud to me.</p> <p>16 Q What don't you understand?</p> <p>17 A I don't -- I do not understand it. I don't</p> <p>18 know how much more than that I can say.</p> <p>19 Q Well, what --</p> <p>20 A It seems contradictory. Internally</p> <p>21 contradictory to me.</p> <p>22 Q What does it -- why is it internally</p> <p>23 contradictory?</p> <p>24 A The last sentence seems to contradict the</p> <p>25 first sentence.</p>
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<p>1 retired lawyer wrote a book about the impact</p> <p>2 on the statute.</p> <p>3 Q Who is this friend?</p> <p>4 A Stephen Haynes.</p> <p>5 Q And what was the book?</p> <p>6 A I can't remember the title but it's -- I think</p> <p>7 2257 is in the title.</p> <p>8 Q That's how you became aware?</p> <p>9 A Yes, he asked me to edit the book for him and</p> <p>10 I was so angry when I finished reading his</p> <p>11 account of the law that I was moved to try to</p> <p>12 do something about this law.</p> <p>13 Q I'm going to mark another exhibit, I think</p> <p>14 we're at 7.</p> <p>15 (Defendant's Exhibit DL7</p> <p>16 marked for identification.)</p> <p>17 MR. BLADUELL: I'm handing a copy to</p> <p>18 counsel of U.S.C. -- I'm sorry, this is 28 CFR</p> <p>19 75.1.</p> <p>20 I'm handing a copy of the exhibit to</p> <p>21 Mr. Levingston as well.</p> <p>22 Q Mr. Levingston, have you read this document</p> <p>23 before?</p> <p>24 A I don't recognize it.</p> <p>25 Q Okay. So is it -- so the answer is you have</p>	<p>1 Q "It does not mean not sexually explicit</p> <p>2 conduct that is merely suggested."</p> <p>3 A It seems like the first sentence describes</p> <p>4 something that's suggested. But I'm no</p> <p>5 lawyer. I'm not qualified to analyze this.</p> <p>6 That's the problem.</p> <p>7 Q Have you consulted an attorney about this</p> <p>8 provision?</p> <p>9 A No.</p> <p>10 Q Even before today you said you haven't read</p> <p>11 it, correct?</p> <p>12 A I have not seen this particular document.</p> <p>13 Q Okay. I'm going to mark some of</p> <p>14 Mr. Levingston's work as exhibits and we can</p> <p>15 talk about them.</p> <p>16 I'm marking three exhibits, DL8, DL9</p> <p>17 and DL10.</p> <p>18 (Defendant's Exhibit DL8 through DL10</p> <p>19 marked for identification.)</p> <p>20 Q I'm going to hand them to Mr. Levingston. I'm</p> <p>21 going to find a copy for counsel --</p> <p>22 MS. BAUMGARDNER: Thank you.</p> <p>23 Q -- and a copy for myself and then we can talk</p> <p>24 about the pictures.</p> <p>25 Mr. Levingston, could you describe each</p>

23 (Pages 89 to 92)



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<p>1 of these exhibits?</p> <p>2 MS. BAUMGARDNER: Objection.</p> <p>3 A Well, they are --</p> <p>4 Q You don't have to say much about them, just</p> <p>5 describe them for the record.</p> <p>6 A They are all photographs that were taken last</p> <p>7 summer on the coast of Maine.</p> <p>8 Q What's in the photographs?</p> <p>9 A The coast of Maine and nude models.</p> <p>10 Q Are these three exhibits, 8, 9 and 10,</p> <p>11 representative of your work involving nude</p> <p>12 models?</p> <p>13 A Yes.</p> <p>14 Q How many pictures like these would you say</p> <p>15 you've produced in the last ten years?</p> <p>16 A Probably hundreds of thousands.</p> <p>17 Q Okay. Around the ballpark of 200,000?</p> <p>18 A I don't know.</p> <p>19 Q Or more than that?</p> <p>20 A I don't -- I really don't know. Thousands and</p> <p>21 thousands. Hundreds of thousand. That's as</p> <p>22 good as I can do.</p> <p>23 Q But if we can try to get a reasonable estimate</p> <p>24 of the thousands, is it more than 500,000 or</p> <p>25 less than 500,000?</p>	<p>1 Q Okay. So let's take five million pictures as</p> <p>2 a possible estimate.</p> <p>3 MS. BAUMGARDNER: Objection.</p> <p>4 Q Is there any way you can know exactly?</p> <p>5 A No. I don't have the records to know.</p> <p>6 Q But the figure five million, it's not -- does</p> <p>7 that sound absurd?</p> <p>8 A Not absurd.</p> <p>9 Q Now, in these three pictures in Exhibits DL8,</p> <p>10 9 and 10, the women are not touching their</p> <p>11 genitals, correct?</p> <p>12 A That is correct.</p> <p>13 Q But you can see some of the genital area of</p> <p>14 the women, correct?</p> <p>15 MS. BAUMGARDNER: Objection.</p> <p>16 A No, you can't.</p> <p>17 Q Can you see pubic hair?</p> <p>18 A Yes.</p> <p>19 Q So from the pictures we can see pubic hair but</p> <p>20 you would say that you cannot see the genital</p> <p>21 area?</p> <p>22 A Yes.</p> <p>23 Q And in most of your pictures that would be</p> <p>24 consistent, that you could see the pubic hair</p> <p>25 but not the genital areas in most of your nude</p>
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<p>1 MS. BAUMGARDNER: Objection.</p> <p>2 A I don't know. I don't count.</p> <p>3 Q So it could be either?</p> <p>4 A Yeah.</p> <p>5 Q Okay. It could be 100,000 -- or I'm sorry,</p> <p>6 it's not more than a million?</p> <p>7 A I don't know. I shoot lots. I shoot -- at a</p> <p>8 shoot like this I could go look and tell you</p> <p>9 how many pictures I took that day but I'm sure</p> <p>10 it's more than a thousand in that day.</p> <p>11 Q For each shoot?</p> <p>12 A Well over a thousand is often the case.</p> <p>13 Q And how many shoots would you say you've --</p> <p>14 A There is no pattern.</p> <p>15 Q Okay. So it's possible that it could be</p> <p>16 millions of pictures?</p> <p>17 MS. BAUMGARDNER: Objection.</p> <p>18 A I don't know.</p> <p>19 Q It's not ten million pictures?</p> <p>20 A I don't know. Probably not.</p> <p>21 Q Okay. All right. That's progress. It's not</p> <p>22 -- is it five million pictures?</p> <p>23 A I don't know.</p> <p>24 Q Is it possible?</p> <p>25 A It might be possible.</p>	<p>1 pictures?</p> <p>2 MS. BAUMGARDNER: Objection.</p> <p>3 A Most. Not all.</p> <p>4 Q Okay. So in some of your nude pictures you</p> <p>5 can see the full genital area?</p> <p>6 A Yes.</p> <p>7 Q And those would be you would consider sexually</p> <p>8 explicit?</p> <p>9 A No.</p> <p>10 Q No. Okay. Why would you not consider those</p> <p>11 sexually explicit?</p> <p>12 A I don't think there is anything -- well, I</p> <p>13 think the entire body is beautiful and that</p> <p>14 there is no particular area of the body that</p> <p>15 is more or less erotic than another area.</p> <p>16 When I compose a photograph I'm looking at the</p> <p>17 overall composition and the look of the</p> <p>18 photograph, I'm not concerned about what parts</p> <p>19 of the model's body are showing or not</p> <p>20 showing. Not something that goes into the</p> <p>21 thinking when I produce photographs.</p> <p>22 Q Okay. Do you alter the pictures in any way,</p> <p>23 photo shop the woman's body?</p> <p>24 A I do very limited photo shop work. I don't</p> <p>25 change the bodies of the models.</p>

24 (Pages 93 to 96)



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<p>1 Q So what limited photo shop work have you done</p> <p>2 on the models?</p> <p>3 A The same kind of work on the photos that you</p> <p>4 would do in a chemical darkroom, adjust for</p> <p>5 exposure and cropping and things like that.</p> <p>6 But no, I don't go in and change the bodies of</p> <p>7 the models.</p> <p>8 Q You don't alter their appearance?</p> <p>9 A No. I might take a zit out or I might</p> <p>10 occasionally take a zit or something like that</p> <p>11 off a model but not much more than that.</p> <p>12 Q Okay. Do you recognize who these models are</p> <p>13 in these pictures?</p> <p>14 A Yes, I do.</p> <p>15 Q Are all of them your friends?</p> <p>16 A Yes.</p> <p>17 Q Do you know their ages at the time that they</p> <p>18 were shot?</p> <p>19 A Not exactly.</p> <p>20 Q Okay. Will you be able to give us a good</p> <p>21 estimate of their ages?</p> <p>22 A I can tell you.</p> <p>23 Q Let's look at DL8 first, which is the one that</p> <p>24 you have in front.</p> <p>25 A Okay. They are in their mid to late 20s, with</p>	<p>1 Q Lake Superior. What state? I'm sorry.</p> <p>2 A Minnesota.</p> <p>3 Q Minnesota?</p> <p>4 A Yeah. I'm not -- I think -- I think that's</p> <p>5 where this was taken.</p> <p>6 Q And do you know the age?</p> <p>7 A Mid 20s.</p> <p>8 Q And let's go to the next one, DL10, please.</p> <p>9 Do you recognize her?</p> <p>10 A Yes.</p> <p>11 Q Do you know the age at the time that they were</p> <p>12 shot?</p> <p>13 A She's in her mid 20s.</p> <p>14 Q By looking at the picture you cannot give me</p> <p>15 an accurate estimate of the age -- a more</p> <p>16 accurate estimate of the age?</p> <p>17 MS. BAUMGARDNER: Objection. More</p> <p>18 accurate than what?</p> <p>19 MR. BLADUELL: Than mid 20s.</p> <p>20 A That's the best. I don't remember their birth</p> <p>21 dates.</p> <p>22 Q Okay. Just from looking at the picture not</p> <p>23 from your recollection of them.</p> <p>24 A That's hard to separate. I know this woman so</p> <p>25 I know how old she is or approximately how old</p>
Page 98	Page 100
<p>1 the exception of one model who is in her 30s.</p> <p>2 Q And who is the model that is in their 30s?</p> <p>3 A The second from the top.</p> <p>4 Q Okay. And you can tell that from your</p> <p>5 recollection of the models, right?</p> <p>6 A Yeah.</p> <p>7 Q Not by looking at the picture?</p> <p>8 A Right.</p> <p>9 Q And let's go to the next one. Let me see</p> <p>10 which one you have in front of you. DL9.</p> <p>11 This is one single woman on top of a rock</p> <p>12 naked, correct?</p> <p>13 A Yes.</p> <p>14 Q Do you know her name?</p> <p>15 A Yes, I do.</p> <p>16 Q And do you recognize her?</p> <p>17 A Yes.</p> <p>18 Q And how old was she when she was shot?</p> <p>19 A I'm trying to -- I think I misspoke before. I</p> <p>20 think this one was not taken on the coast of</p> <p>21 Maine.</p> <p>22 Q Okay.</p> <p>23 A I'm not sure. I'd have to go look. It could</p> <p>24 have been taken on the north shore of Lake</p> <p>25 Superior.</p>	<p>1 she is, so I don't know how I can remove that</p> <p>2 information and analyze the picture,</p> <p>3 especially a very poor quality one like that.</p> <p>4 Q Sorry. But if you look at a picture of a nude</p> <p>5 woman will you be able to tell the exact age</p> <p>6 of that woman?</p> <p>7 MS. BAUMGARDNER: Objection.</p> <p>8 A No.</p> <p>9 Q Do you consider that these images are subject</p> <p>10 to Section 2257?</p> <p>11 A No.</p> <p>12 Q And why are they not subject to 2257?</p> <p>13 A There is nothing -- no sexual activity.</p> <p>14 Q No sexual intercourse you mean?</p> <p>15 A Right.</p> <p>16 MS. BAUMGARDNER: Objection.</p> <p>17 A Well, sexual activity.</p> <p>18 Q Okay.</p> <p>19 A I don't understand the statutes that well but</p> <p>20 there is nothing sexual going on in these</p> <p>21 pictures.</p> <p>22 Q What do you mean by sexual activity?</p> <p>23 A There are forms of sexual activity other than</p> <p>24 intercourse.</p> <p>25 Q Yes. Is masturbation one of them?</p>

25 (Pages 97 to 100)

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1 A Yes.  
 2 Q Do you consider that these pictures are  
 3 lascivious exhibition of genitals or pubic  
 4 area?  
 5 A No. I wouldn't have taken them if they -- if  
 6 I felt that.  
 7 Q I'm sorry. You said that you -- what year did  
 8 you take them?  
 9 A Two of these were taken this past summer in  
 10 2012.  
 11 Q Which ones, DL?  
 12 A 10 and 8.  
 13 Q This past summer meaning 2012?  
 14 A Right. I'd have to look to know the -- when I  
 15 made that trip to the north shore of Lake  
 16 Superior but it was within the last three  
 17 years.  
 18 Q Is that DL8?  
 19 A DL9.  
 20 Q DL9 is the one that you had done you're not  
 21 sure?  
 22 A Yeah. Three years maybe ago. I can't -- I  
 23 can't remember.  
 24 Q So it's older than the other pictures?  
 25 A Yes.

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1 Q Do you keep 2257 records --  
 2 A No, I do not.  
 3 Q -- for these pictures? Do you consider that  
 4 these images are subject to 2257(a)?  
 5 A No.  
 6 Q Why don't you consider them subject to  
 7 2257(a)?  
 8 MS. BAUMGARDNER: Objection.  
 9 A Well, they don't show any simulated sexual  
 10 activity.  
 11 Q So the statutes have -- 2257, 2257(a) have not  
 12 prevented you from taking these pictures?  
 13 A No, I wouldn't have taken them if I felt they  
 14 were constrained by the statutes.  
 15 Q Okay. Now, you have produced pictures that  
 16 you think are covered by 2257(a), correct?  
 17 A Yes.  
 18 Q But the pictures that you have created that  
 19 you think are covered by 2257(a) have been  
 20 less than the ones that you think are not  
 21 covered by 2257(a), correct?  
 22 A I mean I created fewer.  
 23 Q Fewer?  
 24 A Yes.  
 25 Q A lot fewer?

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1 A A lot fewer.  
 2 MR. BLADUELL: I'm going to mark  
 3 another exhibit, Exhibit DL11.  
 4 (Defendant's Exhibit DL11  
 5 marked for identification.)  
 6 MR. BLADUELL: I'm handing a copy to  
 7 the witness. I handed a copy to counsel.  
 8 Q This is an image titled "You can put an eye  
 9 out," correct.  
 10 A Yes.  
 11 Q And this was exhibited in the juried show in  
 12 Detroit in February of 2009; is that correct?  
 13 A Yes. Well, I'm not sure of the year but that  
 14 sounds about right.  
 15 Q And you produced this image in August of 2008?  
 16 A Sounds right. Again, I'd have to check to be  
 17 sure of the date.  
 18 Q Sounds about right?  
 19 A Sounds about right.  
 20 Q Where was it published?  
 21 A It was published in a book. I can't  
 22 remember. Did I give you a title of that  
 23 book? I can't remember the name of the book.  
 24 Q Is it "The Figure in Nature"?  
 25 A No. It was a collection of erotic

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1 photography.  
 2 Q Not all produced by you?  
 3 A No. It was -- it was a juried exhibit and  
 4 book.  
 5 Q Did you put this image on your web site?  
 6 A I had it on my web site at one time.  
 7 Q The davelevingston.com?  
 8 A No, it was a different URL at the time.  
 9 Q Do you remember that URL?  
 10 A It was on blog spot, exposed from the shadows  
 11 dot blog spot dot com or something like that.  
 12 Q Is that now davelevingston.com?  
 13 A It's been migrated over to that, yeah.  
 14 Q At some point you removed this picture from  
 15 your web site?  
 16 A Yes.  
 17 Q This was around the time that 2257(a) was  
 18 enacted?  
 19 A Yes.  
 20 Q What was your understanding about what 2257  
 21 required you to do with respect to the  
 22 picture?  
 23 A Well, I was concerned that -- there was  
 24 expressed to me that this would be interpreted  
 25 as sadomasochistic abuse.

26 (Pages 101 to 104)

Page 105	Page 107
<p>1 Q And who said that to you?</p> <p>2 MS. BAUMGARDNER: Objection. I believe</p> <p>3 that would be privileged, so I'm going to</p> <p>4 instruct him not to answer.</p> <p>5 MR. BLADUELL: Okay. Let's get</p> <p>6 clear for the record, the question was who</p> <p>7 told you that this could be subject to the</p> <p>8 statutes and counsel has said --</p> <p>9 MS. BAUMGARDNER: Okay. Actually I</p> <p>10 withdraw that objection. You can go ahead and</p> <p>11 answer that.</p> <p>12 A Counsel told me that.</p> <p>13 Q Okay. Which counsel?</p> <p>14 A This lady right here. (Indicating.)</p> <p>15 Q And did she tell you that at -- that would be</p> <p>16 Ms. Baumgardner, correct?</p> <p>17 A Yes.</p> <p>18 Q Did she tell you that in August at the time</p> <p>19 the statute was enacted?</p> <p>20 A I don't know when she told me that.</p> <p>21 Q Okay. But was it around the time that you --</p> <p>22 did you rely on that advice to take it out?</p> <p>23 A Yes.</p> <p>24 Q Off your web site?</p> <p>25 A Yes, I did.</p>	<p>1 A Which question?</p> <p>2 MS. BAUMGARDNER: I'm instructing you</p> <p>3 not to answer the question.</p> <p>4 MR. BLADUELL: Which one, the one</p> <p>5 about --</p> <p>6 MS. BAUMGARDNER: Well, I guess it was</p> <p>7 a two-part question. Why don't you divide it</p> <p>8 up.</p> <p>9 Q Okay. You came to an understanding that this</p> <p>10 picture was subject to 2257(a)?</p> <p>11 A I don't think I would say that.</p> <p>12 Q Okay. So you relied on what other people told</p> <p>13 you to make the -- to remove this picture?</p> <p>14 You based -- I'm sorry, let me rephrase that.</p> <p>15 You based your removal of the picture</p> <p>16 from your web site from what other people told</p> <p>17 you, correct?</p> <p>18 A Yes.</p> <p>19 Q Not from your own reading of the statute and</p> <p>20 determination that this was subject to the</p> <p>21 statute?</p> <p>22 MS. BAUMGARDNER: Objection. Go ahead,</p> <p>23 you can answer that.</p> <p>24 A Not from my own understanding.</p> <p>25 Q You said that they told you it could be</p>
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<p>1 Q Did you read the statute before taking it out?</p> <p>2 A I had read my friend's book at that time so I</p> <p>3 was going from what he had written in his book</p> <p>4 which included quotes from the statute.</p> <p>5 Q And you came to an understanding from</p> <p>6 Ms. Baumgardner's advice and from your</p> <p>7 friend's advice that this would be subject to</p> <p>8 the statute?</p> <p>9 MS. BAUMGARDNER: Objection. I'm going</p> <p>10 to instruct him not to answer that. I think</p> <p>11 you're encroaching on attorney-client</p> <p>12 privileged communication I made to him.</p> <p>13 MR. BLADUELL: I'm asking about his</p> <p>14 understanding, not about what you specifically</p> <p>15 told him.</p> <p>16 MS. BAUMGARDNER: Based on my advice,</p> <p>17 so implicit in that is what -- would reveal</p> <p>18 what my advice to him was.</p> <p>19 You can answer the question with regard</p> <p>20 to your friend's book but any conversation or</p> <p>21 communications we've had -- I've let you ask</p> <p>22 him, he can identify when he recalled it and</p> <p>23 that we had it, but any further subject matter</p> <p>24 regarding our communication is privileged.</p> <p>25 Q You can answer the question.</p>	<p>1 interpreted as sadistic or masochistic</p> <p>2 behavior, correct? That's something you said</p> <p>3 already; is that accurate?</p> <p>4 A Yes.</p> <p>5 Q What does sadistic mean to you?</p> <p>6 A It means inflicting pain.</p> <p>7 Q And what does masochistic mean to you?</p> <p>8 A Receiving pain I guess.</p> <p>9 Q Does it look from the picture that the model</p> <p>10 is in pain?</p> <p>11 A No.</p> <p>12 Q Do you believe that the picture is sadistic</p> <p>13 behavior, according to your definition?</p> <p>14 MS. BAUMGARDNER: Objection. We're</p> <p>15 talking about 2257(a) and you're leaving out</p> <p>16 an important word of simulated.</p> <p>17 MR. BLADUELL: Well, I'm asking him.</p> <p>18 MS. BAUMGARDNER: Well, you have to be</p> <p>19 fair.</p> <p>20 MR. BLADUELL: You can object to the</p> <p>21 question.</p> <p>22 MS. BAUMGARDNER: Well, I'm objecting</p> <p>23 because I don't think it's a fair question.</p> <p>24 MR. BLADUELL: But, counsel, you can</p> <p>25 object to the question but speaking</p>

27 (Pages 105 to 108)

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<p>1 objections, you know, they are not allowed</p> <p>2 under the rules.</p> <p>3 Q Go ahead please, sir.</p> <p>4 A Could you restate the question, please?</p> <p>5 Q Do you believe this picture depicts sadistic</p> <p>6 behavior?</p> <p>7 A No.</p> <p>8 Q And were you concerned that you could not</p> <p>9 comply with the requirements of the statute</p> <p>10 2257(a) as to this picture and that's the</p> <p>11 reason that you removed it?</p> <p>12 A Yes.</p> <p>13 Q And why could you not comply with the statutes</p> <p>14 as regards to this picture?</p> <p>15 A I do not and will not maintain 2257 records.</p> <p>16 Period.</p> <p>17 Q And that's why?</p> <p>18 A I'm not willing to be subject to warrantless</p> <p>19 searches. I'm not able to be available 20</p> <p>20 hours a week to allow those searches, and I</p> <p>21 don't believe I could keep records in the</p> <p>22 manner that the statute requires.</p> <p>23 Q But you do keep model releases for other</p> <p>24 models who have appeared in nude pictures,</p> <p>25 correct?</p>	<p>1 have you taken this year?</p> <p>2 A Let's see. I was in Florida in February. I</p> <p>3 was in --</p> <p>4 Q For how long?</p> <p>5 A For a week. In South Carolina for a week.</p> <p>6 Q When, in February?</p> <p>7 A February, March. I'm trying to think where</p> <p>8 else have I been.</p> <p>9 Q And is this travel connected to photography?</p> <p>10 A Sometimes.</p> <p>11 Q But not necessarily?</p> <p>12 A Not necessarily.</p> <p>13 Q Some of this travel would be for vacation --</p> <p>14 A Vacation.</p> <p>15 Q -- purposes? Okay. So you can go on with</p> <p>16 other travels during this year.</p> <p>17 A I'd have to look at my calendar. I travel</p> <p>18 frequently.</p> <p>19 Q Okay. Let's say last year, 2012.</p> <p>20 A You want me to go through everywhere I went</p> <p>21 last year?</p> <p>22 Q Yes. If you remember.</p> <p>23 A I can't from memory.</p> <p>24 Q You don't remember. I remember.</p> <p>25 A I was in Maine for an extended week. I've</p>
Page 110	Page 112
<p>1 A Yes.</p> <p>2 Q And it would not be burdensome for you to keep</p> <p>3 a model release for this model, correct?</p> <p>4 MS. BAUMGARDNER: Objection.</p> <p>5 Q Would it be burdensome to keep a model release</p> <p>6 for this model?</p> <p>7 A No.</p> <p>8 Q Would it be burdensome to keep a photo of her</p> <p>9 ID?</p> <p>10 A No.</p> <p>11 Q It would be burdensome to be available 20</p> <p>12 hours a week for the inspections?</p> <p>13 A Certainly. Yes.</p> <p>14 Q And that is because -- and why would that be</p> <p>15 burdensome?</p> <p>16 A I go places. I'm not home 20 hours a week.</p> <p>17 Q So how often do you travel?</p> <p>18 A Frequently.</p> <p>19 Q Do you travel every week?</p> <p>20 A No.</p> <p>21 Q Do you travel every month?</p> <p>22 A Pretty much, yes.</p> <p>23 Q And where do you travel?</p> <p>24 A Anywhere I want to go.</p> <p>25 Q Okay. Let's talk about this year. What trips</p>	<p>1 been to Vermont several times. We have a 98</p> <p>2 year old mother-in-law that is in a nursing</p> <p>3 home in Vermont. We go up there every other</p> <p>4 month or so. I'm trying to think where else I</p> <p>5 went in the last year. I do this a lot, and</p> <p>6 without looking at my calendar I can't really</p> <p>7 answer the question.</p> <p>8 Q Do you remember now for work where you</p> <p>9 traveled last year?</p> <p>10 A Well, Maine was the main trip last year.</p> <p>11 Q And this was in what month?</p> <p>12 A I think it was July.</p> <p>13 Q July of 2012?</p> <p>14 A Right.</p> <p>15 Q And how long were you there?</p> <p>16 A Over a week.</p> <p>17 Q Two weeks?</p> <p>18 A Well, I don't think it was quite two weeks.</p> <p>19 Q A week and a half?</p> <p>20 A Yeah. I drive on these trips so there is</p> <p>21 travel time.</p> <p>22 Q Any other work related to photography that you</p> <p>23 remember from last year?</p> <p>24 A I'm sure there was some but I can't remember.</p> <p>25 Q Probably one more?</p>

28 (Pages 109 to 112)

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<p>1 A Several more.</p> <p>2 Q Several, like five more?</p> <p>3 A Maybe at the most.</p> <p>4 Q Where are the places?</p> <p>5 A I can't remember. I really -- I'd have to</p> <p>6 look at my calendar. I do this all the time.</p> <p>7 Q So do you keep a calendar of your travels for</p> <p>8 last year?</p> <p>9 A Well, I keep a personal calendar that often</p> <p>10 has notes that would help me remember where I</p> <p>11 was when.</p> <p>12 MR. BLADUELL: I'm going to request</p> <p>13 production of that calendar just to -- just</p> <p>14 note the answer to my question about the</p> <p>15 travels that you've taken during the last</p> <p>16 year. I believe they are relevant to us.</p> <p>17 MS. BAUMGARDNER: You make the request</p> <p>18 to me.</p> <p>19 MR. BLADUELL: Right. I'll make the</p> <p>20 request to counsel.</p> <p>21 Q This photograph in DL11, Mr. Levingston, was</p> <p>22 exhibited in the Detroit Dirty Show. Did I</p> <p>23 get that correct?</p> <p>24 A Right. That's close to correct. Yeah.</p> <p>25 Q Does it have a different name?</p>	<p>1 Q Are these photographs nude?</p> <p>2 A Yes.</p> <p>3 Q Would these photographs resemble Exhibits DL8,</p> <p>4 DL9 and DL10?</p> <p>5 A Yes.</p> <p>6 Q Do you have sexually explicit material that</p> <p>7 you wanted to exhibit in The Dirty Show that</p> <p>8 you didn't?</p> <p>9 A Not this year.</p> <p>10 Q Okay. Last year?</p> <p>11 A No. I haven't been doing anything that would</p> <p>12 fall under 2257(a) since it took affect.</p> <p>13 Q Now, besides this picture, DL11, you have</p> <p>14 produced other depictions that you think --</p> <p>15 you would consider could be subject to the</p> <p>16 statutes, to 2257(a), correct?</p> <p>17 A Yes.</p> <p>18 MR. BLADUELL: I'm going to mark as</p> <p>19 Exhibit DL12 a list of photographs, or it's a</p> <p>20 list -- it's a list of birth dates and other</p> <p>21 dates. I'm providing also a copy to counsel.</p> <p>22 (Defendant's Exhibit D112</p> <p>23 marked for identification.)</p> <p>24 Q I provided the exhibit to Mr. Levingston.</p> <p>25 Now, do you recognize this list,</p>
Page 114	Page 116
<p>1 A It's just Dirty Show. The Dirty Show.</p> <p>2 Q That takes place in Detroit?</p> <p>3 A That takes place in Detroit.</p> <p>4 Q Is this something that's done every year?</p> <p>5 A Sometimes twice a year.</p> <p>6 Q And how often do you go to the show?</p> <p>7 A I try to go every year. I don't always make</p> <p>8 it.</p> <p>9 Q Okay. Did you go there this year?</p> <p>10 A Yes, I did.</p> <p>11 Q And when was that?</p> <p>12 A In February.</p> <p>13 Q Okay.</p> <p>14 A That's one of the trips.</p> <p>15 Q I'm sorry?</p> <p>16 A That's one of the trips.</p> <p>17 Q One of the trips. Okay. Making progress.</p> <p>18 Did you exhibit work at The Dirty Show</p> <p>19 this year?</p> <p>20 A Yes, I did.</p> <p>21 Q And what did you exhibit?</p> <p>22 A I think I had three photographs in the main</p> <p>23 show.</p> <p>24 Q And are these photographs sexually explicit?</p> <p>25 A No.</p>	<p>1 Mr. Levingston?</p> <p>2 A Yes, I do.</p> <p>3 Q And could you describe what it is?</p> <p>4 A It's a list of basically models with their</p> <p>5 date of birth and photos in which they appear</p> <p>6 but would have fallen under 2257(a) had they</p> <p>7 been produced after that.</p> <p>8 Q When did you compile this list?</p> <p>9 A A week or so ago.</p> <p>10 Q Now, the list identifies the date of birth for</p> <p>11 18 models; is that correct?</p> <p>12 A I think that's right. Well, there is only 17</p> <p>13 here. There is the eighteenth one, yes.</p> <p>14 Q If you look at number two on the list of</p> <p>15 DL12.</p> <p>16 A Yes.</p> <p>17 Q 3-16-09 is the date of the shoot, correct?</p> <p>18 A Yes.</p> <p>19 Q And 50 pictures were the total amount of</p> <p>20 pictures taken in that photo shoot?</p> <p>21 A No.</p> <p>22 Q Okay. What would 50 photos mean?</p> <p>23 A That means that out of that shoot there were</p> <p>24 50 that, looking at them now I felt could be</p> <p>25 considered to be under the statute. And</p>

29 (Pages 113 to 116)



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<p>1 that's just my conservative opinion.</p> <p>2 Q Okay. Would that also be the case for all the</p> <p>3 other ones?</p> <p>4 A It's either the number of pictures in the</p> <p>5 shoot that I think might fall under the</p> <p>6 statute or the total number of pictures taken</p> <p>7 in the shoot if the majority of the pictures</p> <p>8 or all the pictures fell into that category.</p> <p>9 Q Now, when we go to Florida, 2-09, do you see</p> <p>10 that?</p> <p>11 A Yes.</p> <p>12 Q What does that mean?</p> <p>13 A That means the pictures were taken in February</p> <p>14 of '09 in Florida. That's how they are filed</p> <p>15 in my computer. As I mentioned earlier,</p> <p>16 sometimes they are filed by the location.</p> <p>17 Q And what are 491 to 534?</p> <p>18 A Those are the file numbers of the photos that</p> <p>19 I considered might fall under the statute.</p> <p>20 Q So is it accurate to say that for every shoot</p> <p>21 that you take you have a file number for that?</p> <p>22 A Well, those are the numbers that the camera</p> <p>23 assigns to each individual picture as it's</p> <p>24 taken.</p> <p>25 Q Okay. And are those numbers recorded in the</p>	<p>1 one model in that time period.</p> <p>2 Q Okay. But if we can try to get around a</p> <p>3 number of models in this time period --</p> <p>4 MS. BAUMGARDNER: Objection.</p> <p>5 Q -- would that be 50 or lower than 50?</p> <p>6 A I can't even guess. I don't know.</p> <p>7 Q Is there a way for you to find out?</p> <p>8 A I would have to go through the files for that</p> <p>9 period, which took me four days to compile</p> <p>10 this list, and I'm not interested in doing</p> <p>11 that again.</p> <p>12 Q Well, if you don't have a good recollection is</p> <p>13 it your opinion now that you would not be able</p> <p>14 to tell me an accurate number?</p> <p>15 A That's right.</p> <p>16 Q But looking at the list, would that be able --</p> <p>17 you would be able to provide a number?</p> <p>18 MS. BAUMGARDNER: Objection.</p> <p>19 Q Looking at your files you would be able to</p> <p>20 provide a number?</p> <p>21 A It's possible.</p> <p>22 Q Okay.</p> <p>23 MR. BLADUELL: I'm going to have to</p> <p>24 request, counsel, the number of models during</p> <p>25 this time period.</p>
Page 118	Page 120
<p>1 pictures that you keep?</p> <p>2 A Yes.</p> <p>3 Q So the number of pictures would be, you know,</p> <p>4 if we subtract 534 from 491, that would be the</p> <p>5 number of pictures --</p> <p>6 A Yes.</p> <p>7 Q -- that you think would be sexually explicit?</p> <p>8 A No. Simulated.</p> <p>9 Q Simulated. I'm sorry. Simulated.</p> <p>10 Now, within the 2005, 2009 framework</p> <p>11 how many models have you photographed nude?</p> <p>12 A I can't say.</p> <p>13 Q Okay.</p> <p>14 A A lot.</p> <p>15 Q It's been a lot more than 18?</p> <p>16 A Yes.</p> <p>17 Q 100, is that fair?</p> <p>18 A I don't know if there were a hundred models</p> <p>19 but there were certainly more than 100 photo</p> <p>20 shoots.</p> <p>21 Q So not 100 models, but 50 models?</p> <p>22 A It's hard for me -- I can't guess at that. I</p> <p>23 work with the same models over and over</p> <p>24 again. When I have a good model I photograph</p> <p>25 her regularly. So I might have 20 shoots with</p>	<p>1 MS. BAUMGARDNER: I'm going to object</p> <p>2 to that request, but you can make it. It's</p> <p>3 completely irrelevant.</p> <p>4 MR. BLADUELL: I disagree on that.</p> <p>5 Q But this list captures all of your sexually</p> <p>6 explicit material from 2005 through 2009,</p> <p>7 simulated?</p> <p>8 A Simulated.</p> <p>9 Q Okay. You didn't produce sexually explicit --</p> <p>10 actual sexually explicit material?</p> <p>11 A No, never have.</p> <p>12 Q Now, how did you determine that these were the</p> <p>13 only models appearing in simulated sexually</p> <p>14 explicit material from 2005 to 2009?</p> <p>15 A I looked at every fucking picture. That's</p> <p>16 why it took four days.</p> <p>17 Q So, I mean, you've done this -- you know,</p> <p>18 you've done this recently, within the past</p> <p>19 week, right?</p> <p>20 A What was it? A week and a half ago, something</p> <p>21 like that.</p> <p>22 Q And you --</p> <p>23 A It took a big chunk out of my time in recent</p> <p>24 time.</p> <p>25 Q And do you remember how many models there</p>

30 (Pages 117 to 120)

Page 121	Page 123
<p>1 were --</p> <p>2 A I didn't count.</p> <p>3 Q -- during the time period? Okay.</p> <p>4 A I was only looking for models that would fit</p> <p>5 this category.</p> <p>6 Q Okay.</p> <p>7 A Or shoots that would fit this category.</p> <p>8 Q You don't segregate your photographs by</p> <p>9 categories of simulated sexually explicit and</p> <p>10 nude?</p> <p>11 A No.</p> <p>12 Q And you said that you invested four days</p> <p>13 looking at this?</p> <p>14 A Yes.</p> <p>15 Q Four full days?</p> <p>16 A Well --</p> <p>17 Q A couple of hours every day?</p> <p>18 A No, major -- the entire working time of four</p> <p>19 days.</p> <p>20 Q So eight hours?</p> <p>21 A Well, I'm not that hard a worker. I don't</p> <p>22 think anybody works that hard. I was -- I got</p> <p>23 up in the morning, I went to the studio. I</p> <p>24 spent the day going through these files for</p> <p>25 four days. I went home at the end.</p>	<p>1 determine the date of birth?</p> <p>2 A The model release.</p> <p>3 Q Through the model release. Okay. And that's</p> <p>4 something that the model's report themselves,</p> <p>5 right?</p> <p>6 A Yes.</p> <p>7 Q And that's the only one that you say you</p> <p>8 couldn't find the ID?</p> <p>9 A Right.</p> <p>10 Q For all the other ones you could find the ID?</p> <p>11 A I think, if I remember correctly that's right.</p> <p>12 MR. BLADUELL: Okay. Counsel, we</p> <p>13 don't have the IDs for the ones 11 in this</p> <p>14 list, 12, 14, 16 and 17.</p> <p>15 MS. BAUMGARDNER: Well, as I recall</p> <p>16 before the deposition began I told you I was</p> <p>17 going to give you a package of discovery. I</p> <p>18 believe that will be included in that package.</p> <p>19 MR. BLADUELL: Well, for the record,</p> <p>20 I just want to state that we have not received</p> <p>21 11, 12, 14, 16 and 17, so I'm going to check</p> <p>22 in that packet that counsel is going to</p> <p>23 provide me. If they are not there I would</p> <p>24 request production of them at a later time.</p> <p>25 Q Now, if we go to your discovery responses,</p>
Page 122	Page 124
<p>1 Q Approximately five hours a day?</p> <p>2 A Well, I was at the studio close to eight hours</p> <p>3 each day, but, you know, we do go to the</p> <p>4 bathroom now and then.</p> <p>5 Q And do you look at -- were these pictures in</p> <p>6 your computer?</p> <p>7 A Yes.</p> <p>8 Q Did you go through the IDs that you had of</p> <p>9 these models?</p> <p>10 A Yes, I did, to come up with the dates of birth</p> <p>11 and all of that.</p> <p>12 Q And so did you use the IDs for that or the</p> <p>13 model releases?</p> <p>14 A Both.</p> <p>15 Q Both. Were there pictures depicting simulated</p> <p>16 sexually explicit material for which you</p> <p>17 couldn't find the IDs?</p> <p>18 A Yes, I think there was one.</p> <p>19 Q And which one? Is it listed here?</p> <p>20 A No. I don't remember which one.</p> <p>21 Q So there could be another -- a nineteenth?</p> <p>22 A No.</p> <p>23 Q It's here?</p> <p>24 A Yes.</p> <p>25 Q And for that particular one, how did you</p>	<p>1 this DL -- maybe not. Let's see. Do I have</p> <p>2 the second one? No, I don't think you do.</p> <p>3 Mark it as an exhibit.</p> <p>4 A Is this a good spot for a break?</p> <p>5 Q Sure. You want to take five minutes.</p> <p>6 (Short recess.)</p> <p>7 (Defendant's Exhibit DL13</p> <p>8 marked for identification.)</p> <p>9 Q We're going to mark DL13 Plaintiff Dave</p> <p>10 Levingston's answer to the defendant's second</p> <p>11 set of interrogatories. I'm handing a copy to</p> <p>12 Mr. Levingston.</p> <p>13 If we go to Interrogatory No. 15,</p> <p>14 Mr. Levingston, I'll tell you the page in a</p> <p>15 moment.</p> <p>16 A I found it.</p> <p>17 Q It's page I guess 4. Can you please just read</p> <p>18 it to yourself and read the answer?</p> <p>19 A Okay.</p> <p>20 Q The interrogatory asks for you to identify</p> <p>21 individuals appearing in sexually explicit</p> <p>22 depictions, correct?</p> <p>23 A Yes.</p> <p>24 Q And you provided this information on the list</p> <p>25 marked as Exhibit DL12?</p>

31 (Pages 121 to 124)

Page 125	Page 127
<p>1 A Okay.</p> <p>2 Q Is that correct?</p> <p>3 A Yes.</p> <p>4 MS. BAUMGARDNER: For --</p> <p>5 MR. BLADUELL: Simulated --</p> <p>6 MS. BAUMGARDNER: And for the time</p> <p>7 period specified.</p> <p>8 MR. BLADUELL: For 2005 through</p> <p>9 2009, correct.</p> <p>10 A Yes.</p> <p>11 Q But you said in your Interrogatory 15, "I have</p> <p>12 not maintained records or any system that</p> <p>13 would allow me to identify which of the photos</p> <p>14 I took or which of the photo shoots I</p> <p>15 conducted would yield the information asked</p> <p>16 for by this interrogatory," correct?</p> <p>17 A Yes, since 1978, which is what you asked for.</p> <p>18 Q But at that time were you able to figure out</p> <p>19 the answer from 2005 to 2009?</p> <p>20 A Yes.</p> <p>21 Q And why didn't you do that at that time?</p> <p>22 A Because that's not what you asked for.</p> <p>23 Q Well, I asked for -- we asked for since '78?</p> <p>24 A Right.</p> <p>25 Q So --</p>	<p>1 created this. I mean, we had to come to an</p> <p>2 agreement on production and answering this.</p> <p>3 So I don't really think it's fair to ask</p> <p>4 Mr. Levingston these questions.</p> <p>5 Q Can you -- I understand the objection but it's</p> <p>6 not an instruction not to answer so you can</p> <p>7 answer.</p> <p>8 MS. BAUMGARDNER: If you can answer, go</p> <p>9 ahead.</p> <p>10 A I'm not sure what you're asking. What was the</p> <p>11 question?</p> <p>12 Q At the time that we made the interrogatory you</p> <p>13 could have provide the birth dates of these</p> <p>14 individuals, correct; the ones that you</p> <p>15 provided on the list of DL12?</p> <p>16 A Yes.</p> <p>17 Q And you didn't do so?</p> <p>18 A Because that's not what you asked for.</p> <p>19 Q What do you understand that we asked for?</p> <p>20 A You asked for name --</p> <p>21 Q Well, I asked for the birth dates, correct?</p> <p>22 A You asked for a name, aliases and birth date.</p> <p>23 Q Well, but you could have provided the birth</p> <p>24 dates, right?</p> <p>25 A Not since 1978.</p>
Page 126	Page 128
<p>1 A That's very different.</p> <p>2 Q Well, 2005 to 2009 falls within '78, correct,</p> <p>3 since 1978, correct?</p> <p>4 A Yes.</p> <p>5 Q So at the time could you have provided it from</p> <p>6 2005 to 2009?</p> <p>7 A 2005 to 2009.</p> <p>8 Q (Nods head.)</p> <p>9 A Well, with enough work, yes, I could have</p> <p>10 found those records.</p> <p>11 MS. BAUMGARDNER: Well, and also let</p> <p>12 the record reflect what this interrogatory has</p> <p>13 asked for in comparison to what Mr. Levingston</p> <p>14 has produced which is not --</p> <p>15 Q Well, the interrogatory asks for the birth</p> <p>16 dates, right?</p> <p>17 A Name and aliases.</p> <p>18 Q The interrogatory asks for birth dates,</p> <p>19 correct?</p> <p>20 A Yes.</p> <p>21 Q And if you were able to provide that answer at</p> <p>22 that time why didn't you do it?</p> <p>23 A That's not what you asked for.</p> <p>24 MS. BAUMGARDNER: Objection. And part</p> <p>25 of it was in consultation with counsel who</p>	<p>1 Q But since 2005 to 2009, correct?</p> <p>2 A Yes, and we did.</p> <p>3 Q Last week?</p> <p>4 A Yes.</p> <p>5 Q And when was this interrogatory made?</p> <p>6 A You didn't ask for that date range until right</p> <p>7 before I provided it.</p> <p>8 Q Well, but the date range was within the date</p> <p>9 range that appears on the interrogatory,</p> <p>10 correct?</p> <p>11 A That's true.</p> <p>12 MS. BAUMGARDNER: You know, you can</p> <p>13 keep asking the witness, but again, some of</p> <p>14 that determination was made by counsel.</p> <p>15 Q If we go to Interrogatory No. 13, please, it's</p> <p>16 on page --</p> <p>17 A One.</p> <p>18 Q Thank you. Two. Right, one and the response</p> <p>19 is on Page 2.</p> <p>20 A Okay.</p> <p>21 Q If we go to number 2, the answer.</p> <p>22 MS. BAUMGARDNER: You mean Page 2?</p> <p>23 MR. BLADUELL: Yeah, Page 2.</p> <p>24 Q I'm going to read it. It's in the middle of</p> <p>25 the paragraph on your answer, "Prior to</p>

32 (Pages 125 to 128)

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<p>1 enactment of 18 U.S.C. 2257(a), in the course 2 of photographing nudes I took photographs that 3 I believe would have been subject to 18 U.S.C. 4 Section 2257(a). Those photos constitute a 5 portion of thousands of photos that I took 6 during each photo shoot." 7 Did I read that accurately, 8 Mr. Levingston? 9 A Yes. 10 Q And the photos that you're referring to in 11 Interrogatory No. 13 are the ones referenced 12 in the list that you have in front of you 13 marked as Exhibit DL12, correct? 14 A Yes. 15 MS. BAUMGARDNER: Objection. 16 Q Are there any other photos or models that 17 you're referencing in your answer to 18 Interrogatory 13 that are not included on the 19 list in the DL12? 20 A The list only covers the date range that was 21 specified. 22 Q So for the 2005 to 2009 time frame all of the 23 models doing sexually explicit material that 24 you would consider sexually explicit from the 25 statutes are identified on the list?</p>	<p>1 Q Okay. Thank you. 2 And when you first produced the list, 3 DL12, correct, you listed 17 models; do you 4 remember that? 5 A Yes. 6 Q And then there was one that you missed? 7 A Yes. 8 Q That you provided the next day? 9 A Yes. 10 Q And how did you miss that? 11 A As I recall, it was somebody who was in a 12 shoot with several models and I missed adding 13 the -- it was just a clerical error as I was 14 counting. 15 MR. BLADUELL: I'm going to mark 16 another exhibit, DL14. 17 (Defendant's Exhibit DL14 18 marked for identification.) 19 Q Mr. Levingston, do you recognize that picture? 20 A Yes, I do. 21 Q And is that one of the pictures referenced in 22 your list of DL -- marked as Exhibit DL12? 23 A Yes. 24 Q And this picture -- strike that. 25 Why do you think that this picture is</p>
Page 130	Page 132
<p>1 A Simulated. 2 Q Simulated? 3 A Yes. 4 Q Okay. Thank you. 5 And when you say those photos in 6 Interrogatory No. 13 you're referring to the 7 ones in DL12, correct? 8 MS. BAUMGARDNER: Objection. 9 Q For the period of 2005 to 2009 -- 10 A Yes. 11 Q -- constitute a portion of the thousands of 12 photos that I took during each photo shoot. 13 And what portion did they constitute from 2005 14 to 2009? 15 A I don't know. 16 Q Is it 50 percent? 17 A No. 18 Q Less? 19 A Yes. 20 Q 30 percent? 21 A No. 22 Q Less? 23 A Yes. 24 Q Okay. Ten percent? 25 A I doubt that it reaches ten percent.</p>	<p>1 subject to 2257(a)? 2 A Well, I'm not sure that it is but it could be 3 interpreted that way because the model's 4 genitals are visible. 5 Q Okay. So the difference between this picture 6 and the ones that you've provided before -- 7 the ones that are marked as exhibits DL8 to 8 DL10 is that the genital area is more exposed? 9 A Yes. 10 Q And why do you consider that simulated? 11 A I don't. 12 Q But why do you consider that they could be 13 interpreted that way? 14 A It's because of the ambiguity of lascivious 15 display. I don't know what that means but 16 there they are so. 17 Q But you don't think it means the other 18 pictures, correct? 19 A Yes, I do not. 20 Q But this one does then? 21 A I think it could be interpreted by someone to 22 fall under the statute. 23 Q And is the reason just because it's more of 24 the genital area than the other ones? 25 A Yes.</p>

33 (Pages 129 to 132)

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<p>1 Q After 2009 have you produced other images that</p> <p>2 you think are subject to 2257(a)?</p> <p>3 A No. Well, wait. There was one that in</p> <p>4 retrospect looking back I thought well</p> <p>5 somebody could think this is, so I included it</p> <p>6 on the list.</p> <p>7 Q Is that number one on DL12?</p> <p>8 A Yes.</p> <p>9 Q So is that the only model who has appeared</p> <p>10 depicted in simulated sexually explicit</p> <p>11 conduct after March 18, 2009?</p> <p>12 A Yes.</p> <p>13 MS. BAUMGARDNER: Which model, number</p> <p>14 one?</p> <p>15 MR. BLADUELL: Number one.</p> <p>16 Q All of the other ones were made before March</p> <p>17 18, 2009?</p> <p>18 A Right.</p> <p>19 Q Now, is it your understanding that for the</p> <p>20 number -- for number one, is it your</p> <p>21 understanding that you have to keep 2257</p> <p>22 records for that model?</p> <p>23 A No.</p> <p>24 Q And why do you think that?</p> <p>25 A Nothing has ever been done with those</p>	<p>1 A I don't know.</p> <p>2 Q You don't recall right now?</p> <p>3 A I don't recall. I don't have any records</p> <p>4 either.</p> <p>5 Q You don't have records of when you sell?</p> <p>6 A Right.</p> <p>7 Q But was your primary intent when you took</p> <p>8 these photographs to sell them?</p> <p>9 A No.</p> <p>10 Q Or to trade them --</p> <p>11 A No.</p> <p>12 Q -- for other photographs?</p> <p>13 A No.</p> <p>14 Q No?</p> <p>15 A No.</p> <p>16 Q Your primary purpose was just to take them to</p> <p>17 express a feeling or?</p> <p>18 A To create art.</p> <p>19 Q To create art.</p> <p>20 MR. BLADUELL: I'm going to mark</p> <p>21 another exhibit, DL15, and I'm going to</p> <p>22 provide a copy to Mr. Levingston and a copy to</p> <p>23 Ms. Baumgardner.</p> <p>24 (Defendant's Exhibit DL15</p> <p>25 marked for identification.)</p>
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<p>1 photographs. It was a failed photo shoot.</p> <p>2 That's why I didn't remember it even. And I</p> <p>3 didn't even discover it until going through</p> <p>4 and looking for this in specific, and I found</p> <p>5 this shoot and I looked at the pictures and I</p> <p>6 thought well, maybe somebody would think this</p> <p>7 would fall under it, so I included it on the</p> <p>8 list.</p> <p>9 Q So the picture number one in DL12 has not been</p> <p>10 published --</p> <p>11 A No.</p> <p>12 Q -- anywhere?</p> <p>13 A Or seen by anyone.</p> <p>14 Q Or seen by anyone?</p> <p>15 A Right.</p> <p>16 Q How about the other pictures in this -- in</p> <p>17 DL12, have they been published?</p> <p>18 A Some of them have been. Well, I don't know</p> <p>19 that anything has been published without doing</p> <p>20 a check for that, but -- and I don't really</p> <p>21 have records that I can check, but some of</p> <p>22 them have been exhibited in galleries.</p> <p>23 Q And web sites?</p> <p>24 A Yes.</p> <p>25 Q Have you sold any of these?</p>	<p>1 Q Mr. Levingston, can you describe what DL15 is?</p> <p>2 A It's my profile page from the web site Model</p> <p>3 Mayhem.</p> <p>4 Q Can you describe what Model Mayhem is?</p> <p>5 A It's a site where models and photographers</p> <p>6 show their work and a place for models to find</p> <p>7 work and photographers to find models.</p> <p>8 Q How often have you used Model Mayhem to</p> <p>9 recruit -- find models?</p> <p>10 A I don't know. I probably would find maybe two</p> <p>11 or three models a year on the site.</p> <p>12 Q When did you write this profile?</p> <p>13 A Maybe -- well, I've edited the profile within</p> <p>14 the past year.</p> <p>15 Q Okay. Do you see that the document has some</p> <p>16 dates at the right?</p> <p>17 A This here? (Indicating.)</p> <p>18 Q I'm sorry, at the left top that says info in</p> <p>19 that column, last activity?</p> <p>20 A Oh, last activity, yes.</p> <p>21 Q March 21, 2013?</p> <p>22 A Uh-huh.</p> <p>23 Q So that's the last time you logged into it?</p> <p>24 A No.</p> <p>25 Q No?</p>

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<p>1 A No. That records whenever you log into the</p> <p>2 site. I log into the site every day.</p> <p>3 Q So is that the last time that you logged in by</p> <p>4 the date that appears on the lower level of</p> <p>5 the document?</p> <p>6 A The last time I logged in was yesterday.</p> <p>7 Q Okay.</p> <p>8 A I log in every day.</p> <p>9 Q Did you change anything?</p> <p>10 A No.</p> <p>11 Q So if I go to your profile right now does it</p> <p>12 say the same thing at the beginning?</p> <p>13 A I believe so, yes.</p> <p>14 Q Okay. You say in this document I'm no longer</p> <p>15 using models for my primary photo work,</p> <p>16 correct?</p> <p>17 A Yes.</p> <p>18 Q So why have you decided not to use models for</p> <p>19 your work?</p> <p>20 A As I mentioned earlier I have two new projects</p> <p>21 that are the primary emphasis of my work right</p> <p>22 now. But another reason for this, this web</p> <p>23 site Model Mayhem is problematic in that you</p> <p>24 get lots of emails from models. And I try</p> <p>25 keep models that I don't want to talk to from</p>	<p>1 A Okay.</p> <p>2 Q It says that you were approached by a former</p> <p>3 prostitute while doing a project that</p> <p>4 contained depictions that could fall under</p> <p>5 2257(a), correct?</p> <p>6 A Yes.</p> <p>7 Q Well, in light of your desire to move away</p> <p>8 from model work, is this a project that you</p> <p>9 still want to do?</p> <p>10 A This is not a model project, this is a</p> <p>11 documentary project, so yes.</p> <p>12 Q You still want to do this?</p> <p>13 A Yes.</p> <p>14 Q When were you approached by this former</p> <p>15 prostitute?</p> <p>16 A Within the past year.</p> <p>17 Q 2012?</p> <p>18 A Yes.</p> <p>19 Q And where were you approached by this former</p> <p>20 -- by this person?</p> <p>21 A In my studio.</p> <p>22 Q She came to your studio?</p> <p>23 A Yes.</p> <p>24 Q Is this a person that you knew before you met</p> <p>25 her?</p>
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<p>1 emailing me. So that's one reason for that</p> <p>2 first line.</p> <p>3 Q And is it accurate what is in the document,</p> <p>4 that the bulk of my new work does not involve</p> <p>5 new models?</p> <p>6 A Yes.</p> <p>7 Q And the reason for that is that the projects</p> <p>8 that you're interested in doing, the ones that</p> <p>9 you described before about journalism and the</p> <p>10 funerals, do not involve depictions of models?</p> <p>11 A It's journalism and alternative process</p> <p>12 photographers.</p> <p>13 Q I'm sorry. Thank you for correcting me.</p> <p>14 A Yes. Nobody gets naked in those pictures.</p> <p>15 Q Did you decide to shift attention to those</p> <p>16 projects because it was burdensome to do nude</p> <p>17 models?</p> <p>18 A No.</p> <p>19 Q Let's go back to DL3. It's the answers to</p> <p>20 your first set of interrogatories. And if we</p> <p>21 go to the third -- Interrogatory No. 10, it</p> <p>22 Page 5. I'm sorry, Page 6. The last</p> <p>23 paragraph here on Page 6 of DL3, can you just</p> <p>24 read that for a second and let me know when</p> <p>25 you're finished please.</p>	<p>1 A Yes. No, I didn't know her before I met her.</p> <p>2 Q Okay.</p> <p>3 A But yes, I've known her --</p> <p>4 Q Did you know her before she came to your</p> <p>5 studio.</p> <p>6 A I've known her for some time, yes.</p> <p>7 Q Is she your friend?</p> <p>8 A Yes.</p> <p>9 Q Is she also a model?</p> <p>10 A Yes.</p> <p>11 Q So after she was a prostitute she became a</p> <p>12 model?</p> <p>13 A No.</p> <p>14 Q She was a model who became a prostitute?</p> <p>15 A Yes.</p> <p>16 Q Have you had work with her as a model before</p> <p>17 she became a prostitute?</p> <p>18 A Yes.</p> <p>19 Q Does that involve nude work?</p> <p>20 A Yes.</p> <p>21 Q Do you have any records documenting this</p> <p>22 approach by this person?</p> <p>23 A No. It was just a conversation.</p> <p>24 Q And how long did the conversation last?</p> <p>25 A I don't know. We were talking for an hour or</p>

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<p>1 two probably.</p> <p>2 Q Okay. What is the age of this person?</p> <p>3 A I don't know. I think she just turned 30.</p> <p>4 Q And have you published pictures of this</p> <p>5 person, nude pictures of this person?</p> <p>6 A I've exhibited some.</p> <p>7 Q And can you describe more in detail what you</p> <p>8 discussed about this project with this person?</p> <p>9 A Well, I guess so. She knows a number of</p> <p>10 former prostitutes and she is an author now</p> <p>11 and is interested in doing a book about her</p> <p>12 experiences and the impact of that part of her</p> <p>13 life on her later life, and we discussed the</p> <p>14 possibility of making a book with photographs.</p> <p>15 Q And you discussed that with her for an hour?</p> <p>16 A More than an hour.</p> <p>17 Q An hour, an hour and a half?</p> <p>18 A I don't know, I wasn't watching the clock. We</p> <p>19 talked.</p> <p>20 Q Approximately an hour and a half?</p> <p>21 A I don't know.</p> <p>22 MS. BAUMGARDNER: Objection.</p> <p>23 A I don't know. I didn't -- I didn't keep</p> <p>24 track.</p> <p>25 Q Is it possible that it was more than two</p>	<p>1 MS. BAUMGARDNER: Objection.</p> <p>2 A The book can take many forms. That's one form</p> <p>3 that it could take. It's in the conceptual</p> <p>4 stage so it's hard to say.</p> <p>5 Q You don't know, haven't contacted a publisher</p> <p>6 about this book?</p> <p>7 A No.</p> <p>8 Q Haven't got any advance?</p> <p>9 A No.</p> <p>10 Q You haven't met any of the other former</p> <p>11 prostitutes that would be involved with this</p> <p>12 work?</p> <p>13 A No. This is a project I would not pursue</p> <p>14 while this law is in force so I have not</p> <p>15 pursued it.</p> <p>16 Q Now, you said in your answer to Interrogatory</p> <p>17 10 that this project would involve depictions</p> <p>18 of the scars of the former prostitutes,</p> <p>19 correct?</p> <p>20 A That is a possible thing that could be</p> <p>21 included. This is all at the conceptual stage</p> <p>22 now so I don't know what the photographs would</p> <p>23 include.</p> <p>24 Q Would the depictions include their faces?</p> <p>25 A That again would depend on the situation and</p>
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<p>1 hours?</p> <p>2 A It's possible. And there has been more than</p> <p>3 one conversation.</p> <p>4 Q Okay. So subsequent conversations, can you</p> <p>5 describe them?</p> <p>6 A Just?</p> <p>7 Q The number of times.</p> <p>8 A No, I don't know.</p> <p>9 Q Is it more than ten conversations?</p> <p>10 A No.</p> <p>11 Q Approximately five?</p> <p>12 A Maybe. In that neighborhood</p> <p>13 Q Maybe less than five?</p> <p>14 A Approximately five.</p> <p>15 Q Okay. And how have the conversations evolved</p> <p>16 in relation to this project?</p> <p>17 A We haven't gone very far with it. She's</p> <p>18 finishing up a book now so this is something</p> <p>19 for down the road once we get this law</p> <p>20 overturned.</p> <p>21 Q Do you have any concrete plans to take</p> <p>22 pictures associated with this book?</p> <p>23 A No.</p> <p>24 Q Is taking pictures necessary for the book that</p> <p>25 she's writing?</p>	<p>1 how the project evolves. Certainly it</p> <p>2 wouldn't without the consent of the person</p> <p>3 involved.</p> <p>4 Q Well, you say here that, "Perhaps could show</p> <p>5 the scars or other physical effects of the</p> <p>6 work that the women did," correct?</p> <p>7 A Yes. That's a possibility.</p> <p>8 Q Would you think that those pictures would be</p> <p>9 sexually explicit?</p> <p>10 A They could be interpreted as lascivious</p> <p>11 display. It's possible.</p> <p>12 Q And by lascivious display you mean?</p> <p>13 A The genitals might be in the picture or</p> <p>14 something.</p> <p>15 Q Would it be like a close up of the genital</p> <p>16 area?</p> <p>17 A You're asking for specifics on something that</p> <p>18 is nowhere near specific at this point.</p> <p>19 Q So there is really no way you can know right</p> <p>20 now if the pictures would be subject to the</p> <p>21 statutes?</p> <p>22 MS. BAUMGARDNER: Objection.</p> <p>23 A Well, it's way too early to know.</p> <p>24 Q You haven't -- you have not fully</p> <p>25 conceptualized what the pictures would entail,</p>

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<p>1 correct?</p> <p>2 A Correct. It's certainly possible to believe</p> <p>3 that they could include things that would fall</p> <p>4 under 2257(a).</p> <p>5 Q And it's possible that they could not be</p> <p>6 subject to the statutes?</p> <p>7 A It's possible.</p> <p>8 Q Would you publish the names of the former</p> <p>9 prostitutes in the book?</p> <p>10 A I don't know. Probably not.</p> <p>11 Q Now, you said that you -- the recordkeeping</p> <p>12 requirements of the -- in your answer to</p> <p>13 Interrogatory No. 10 you said that the</p> <p>14 recordkeeping requirements of the statute</p> <p>15 would compromise the identities of the</p> <p>16 subjects, correct?</p> <p>17 A Yes.</p> <p>18 Q And the recordkeeping requirements would</p> <p>19 require you to take a photo of their -- or to</p> <p>20 make a copy of their ID, correct?</p> <p>21 A I believe so, yes.</p> <p>22 Q And why would that -- but you don't need to</p> <p>23 publish that in the book, correct?</p> <p>24 A I believe that's right.</p> <p>25 Q And if you don't publish the information in</p>	<p>1 access to my records and thereby --</p> <p>2 Q But you would not willingly share that with</p> <p>3 other people, correct?</p> <p>4 A That's true.</p> <p>5 Q So what you're saying is it's possible that</p> <p>6 someone can access the records without your</p> <p>7 consent?</p> <p>8 A Yes.</p> <p>9 Q Have people accessed records in your studio</p> <p>10 without your consent?</p> <p>11 A No.</p> <p>12 Q Do you think it's likely that people would</p> <p>13 access records in your studio without your</p> <p>14 consent?</p> <p>15 A No.</p> <p>16 Q Have you contacted an attorney to advise you</p> <p>17 on how to publish this book?</p> <p>18 A No.</p> <p>19 Q Or about how to comply with the 2257 in</p> <p>20 relation to the book?</p> <p>21 A No.</p> <p>22 Q Do you have plans to talk to this individual</p> <p>23 in the near future to discuss this book?</p> <p>24 A No specific plans at this time.</p> <p>25 Q Do you anticipate making plans?</p>
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<p>1 the book how would it compromise the identity</p> <p>2 of the subjects?</p> <p>3 A It would be revealed to any inspector who</p> <p>4 inspected the records.</p> <p>5 Q If no inspector inspected the records then how</p> <p>6 would that compromise the identity of the</p> <p>7 individuals?</p> <p>8 A Well, it could make the individual reluctant</p> <p>9 to participate just by having to provide their</p> <p>10 ID.</p> <p>11 Q That's not the question. The question is how</p> <p>12 they would compromise the identity, not if</p> <p>13 they are reluctant. So how would they</p> <p>14 compromise the identity of the individual if</p> <p>15 there is no inspection of records?</p> <p>16 A It would compromise the identity of the</p> <p>17 individual because I would know their name.</p> <p>18 Q So other than you would anyone necessarily</p> <p>19 have that information?</p> <p>20 A Not necessarily, but possibly.</p> <p>21 Q How would they obtain that information?</p> <p>22 A Through my records.</p> <p>23 Q And would you provide that to other people?</p> <p>24 A We're way beyond -- we're way into speculation</p> <p>25 here but it's possible that someone could get</p>	<p>1 A Yes.</p> <p>2 Q When do you think you're going to talk to this</p> <p>3 person again?</p> <p>4 A I have no idea.</p> <p>5 Q You don't have it in your calendar?</p> <p>6 A Right.</p> <p>7 Q Are there any other projects like the one you</p> <p>8 described in Interrogatory No. 10 involving</p> <p>9 depictions of sexually explicit material or</p> <p>10 simulated sexually explicit material that you</p> <p>11 want to do but you wouldn't -- you've decided</p> <p>12 that you would not do because of the statutes?</p> <p>13 A Nothing specific.</p> <p>14 Q When you say nothing specific, is there -- do</p> <p>15 you have an idea in your mind of a project</p> <p>16 that you would like to do?</p> <p>17 A Not at this time.</p> <p>18 Q Let's go back to Interrogatory No. 5, please.</p> <p>19 It's on Page 3. It says in this second</p> <p>20 paragraph, Mr. Levingston, "I have ceased</p> <p>21 producing any erotic work that might arguably</p> <p>22 fall under the statute because I am unable to</p> <p>23 be constantly available to allow inspection of</p> <p>24 the records as required by the statutes and</p> <p>25 therefore do not want to risk prosecution for</p>

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<p>1 violating the statutes, nor am I willing to</p> <p>2 waive my Fourth Amendment rights to allow such</p> <p>3 inspections." Is that an accurate reading?</p> <p>4 A Yes.</p> <p>5 Q By erotic work in this sentence do you mean</p> <p>6 nudes or --</p> <p>7 A I mean work that would fall under 2257(a).</p> <p>8 Q So you have not ceased producing nude work</p> <p>9 because of this statute?</p> <p>10 A No.</p> <p>11 Q Correct? Is that a yes?</p> <p>12 A I have not ceased producing nude work.</p> <p>13 Q Okay.</p> <p>14 A Yes.</p> <p>15 Q Now, do you keep your records in your studio?</p> <p>16 A Yes.</p> <p>17 Q And where is that studio?</p> <p>18 A In Dayton, Ohio.</p> <p>19 Q And how far is that from your house?</p> <p>20 A About 25 miles.</p> <p>21 Q Are there other people in the studio?</p> <p>22 A Yes.</p> <p>23 Q And who are these people?</p> <p>24 A I share the studio with two other</p> <p>25 photographers.</p>	<p>1 A Yes.</p> <p>2 Q Are there sometimes that you all travel at the</p> <p>3 same time?</p> <p>4 A Not together.</p> <p>5 Q What is the nature of their work, the other</p> <p>6 two photographers in your studio?</p> <p>7 A One of them does nude work, the other does</p> <p>8 commercial work.</p> <p>9 Q Do they travel often for their work?</p> <p>10 A The one that does nude work does.</p> <p>11 Q And the other one doesn't?</p> <p>12 A Right.</p> <p>13 Q Does the other photographer that does nudes,</p> <p>14 does he travel more than you?</p> <p>15 A No, I'd say I travel more than him.</p> <p>16 Q So when you're traveling could they serve as</p> <p>17 custodian of the records?</p> <p>18 MS. BAUMGARDNER: Objection.</p> <p>19 A No.</p> <p>20 Q Could they open the door of the studio to an</p> <p>21 inspector?</p> <p>22 A Yes.</p> <p>23 Q But your records would be in your computer,</p> <p>24 right?</p> <p>25 A I don't keep any records.</p>
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<p>1 Q Are these photographers your friends?</p> <p>2 A Acquaintances.</p> <p>3 Q So not really friends?</p> <p>4 A Right.</p> <p>5 Q How long have you known them for?</p> <p>6 A One of them for about five years, the other</p> <p>7 one for less than a year.</p> <p>8 Q Have they been to your house?</p> <p>9 A No.</p> <p>10 Q Have you been to their house?</p> <p>11 A No. Well, one of them I've been to his house,</p> <p>12 yes.</p> <p>13 Q In a social setting?</p> <p>14 A Not for a party or anything, just stopping by.</p> <p>15 Q Was it work related or --</p> <p>16 A Yes. Yeah.</p> <p>17 Q Is there a secretary in the studio?</p> <p>18 A No.</p> <p>19 Q When you travel for work do they travel with</p> <p>20 you?</p> <p>21 A They?</p> <p>22 Q The photographers.</p> <p>23 A No.</p> <p>24 Q So sometimes when you travel these</p> <p>25 photographers stay in the studio?</p>	<p>1 Q Any pictures -- well, you keep IDs, right, of</p> <p>2 the models?</p> <p>3 A Yes.</p> <p>4 Q And model releases?</p> <p>5 A Yes.</p> <p>6 Q In paper form?</p> <p>7 A The releases are in paper form.</p> <p>8 Q And those releases are in a cabinet?</p> <p>9 A In a desk drawer.</p> <p>10 Q Desk drawer. And is that drawer locked?</p> <p>11 A No.</p> <p>12 Q Okay. Do you feel it's likely that you will</p> <p>13 be prosecuted under the statutes?</p> <p>14 MS. BAUMGARDNER: Objection.</p> <p>15 A I certainly hope not.</p> <p>16 Q But you don't think it's likely?</p> <p>17 MS. BAUMGARDNER: Objection.</p> <p>18 A I hope not. I think the statute is so vague</p> <p>19 that anyone who takes a nude photograph could</p> <p>20 be prosecuted under it.</p> <p>21 Q Do you know any other photographers who have</p> <p>22 photographed nudes without being inspected?</p> <p>23 A No.</p> <p>24 Q Do you know any of the other photographers who</p> <p>25 do nudes who have been prosecuted?</p>

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<p>1       them sign model releases that include</p> <p>2       statement of their age"?</p> <p>3     A    Yes.</p> <p>4     Q    When you say that you've never worked with</p> <p>5       models under the age of 18, does that apply to</p> <p>6       your -- are you referring to your nude work?</p> <p>7     A    Yes.</p> <p>8     Q    Not only your sexually explicit -- simulated</p> <p>9       sexually explicit work?</p> <p>10    A    Yes.</p> <p>11    Q    If we go to Interrogatory No. 10, if we go to</p> <p>12       the third paragraph, the last sentence, it</p> <p>13       says, "Yet none of my work depicts persons who</p> <p>14       could be confused as children."</p> <p>15    A    Yes.</p> <p>16    Q    When you say none of your work, does that</p> <p>17       include your nudes that are not simulated</p> <p>18       sexually explicit?</p> <p>19    A    Yes.</p> <p>20    Q    Okay.</p> <p>21       (Defendant's Exhibit DL17</p> <p>22       marked for identification.)</p> <p>23       MR. BLADUELL:   I'm going to provide</p> <p>24       a copy to counsel. I'm not going to question</p> <p>25       the witness.</p>	<p>1     A    Yes.</p> <p>2     Q    But you have produced depictions of models</p> <p>3       that are 18 years of age, correct?</p> <p>4     A    Have I? I don't believe so.</p> <p>5     Q    Nude depictions?</p> <p>6     A    I don't believe so.</p> <p>7     Q    You don't believe -- okay. So you have not --</p> <p>8       your recollection is that you have produced</p> <p>9       nude depictions?</p> <p>10    A    You're talking about have I taken?</p> <p>11    Q    Yes.</p> <p>12    A    I don't believe so but it's possible.</p> <p>13    Q    Is it possible that you've taken pictures</p> <p>14       involving nudes of women that are 19 years</p> <p>15       old?</p> <p>16    A    That is possible</p> <p>17    Q    Do you believe that it is possible or</p> <p>18       probable?</p> <p>19    A    Probable.</p> <p>20    Q    And is it your opinion that an 18 year old and</p> <p>21       a 19 year old cannot be confused with a minor?</p> <p>22    A    Not if you're checking their ID.</p> <p>23    Q    So you would need the ID to know, correct?</p> <p>24       MS. BAUMGARDNER: Objection.</p> <p>25    A    I would check their ID to be sure.</p>
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<p>1       Just for the record we had requested</p> <p>2       some samples of depictions and counsel has</p> <p>3       refused to provide them arguing that they were</p> <p>4       not relevant. And we do believe that these</p> <p>5       are relevant to assess the claims</p> <p>6       Mr. Levingston makes with regards to his First</p> <p>7       Amendment claim, therefore, we're going to</p> <p>8       request again these pictures.</p> <p>9       We ask them to be produced</p> <p>10      immediately. If we don't reach an agreement</p> <p>11      by the end of the deposition or today our</p> <p>12      intention is to contact the court to compel.</p> <p>13      MS. BAUMGARDNER: Okay.</p> <p>14      MR. BLADUELL:   Refusal to provide</p> <p>15      the pictures limits our ability to assess this</p> <p>16      claim by Mr. Levingston for the deposition</p> <p>17      today. The exhibit reflects that we've made</p> <p>18      that clear to opposing counsel. So we reserve</p> <p>19      the right to reopen the deposition if we get</p> <p>20      these pictures to question Mr. Levingston</p> <p>21      about them.</p> <p>22    Q    When you say in Interrogatory No. 10,</p> <p>23       Mr. Levingston, that none of my work depicts</p> <p>24       persons who could be confused as children,</p> <p>25       that's accurate, right?</p>	<p>1     Q    Can you tell from looking at them? Can you</p> <p>2       tell apart a 17 year old and a 19 year old?</p> <p>3       MS. BAUMGARDNER: Objection.</p> <p>4     A    No.</p> <p>5     Q    Can you tell apart a 17 year old from a 19</p> <p>6       year old?</p> <p>7       MS. BAUMGARDNER: Objection.</p> <p>8     A    Probably not.</p> <p>9     Q    Can a person below the age of 18 reach full</p> <p>10      maturity with respect to pubic hair?</p> <p>11    A    I don't know. You're in an area I just don't</p> <p>12      know.</p> <p>13    Q    Have you photographed individuals under 18</p> <p>14       years old nude?</p> <p>15    A    No.</p> <p>16    Q    Ever?</p> <p>17    A    No.</p> <p>18    Q    Other than your kids have you seen individuals</p> <p>19       under the age of 18 nude?</p> <p>20       MS. BAUMGARDNER: Objection.</p> <p>21    A    Not that I know of.</p> <p>22    Q    When you wrote in Interrogatory No. 7,</p> <p>23       Mr. Levingston --</p> <p>24       MS. BAUMGARDNER: Of Exhibit 3?</p> <p>25       MR. BLADUELL:   Of DL3, correct.</p>

45 (Pages 177 to 180)



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1 A G applies to this.  
 2 Q Okay.  
 3 A You didn't let me read.  
 4 Q You can read it. "Notwithstanding any  
 5 provision of this part or any other regulation  
 6 a law enforcement officer may seize any  
 7 evidence of the commission of any felony while  
 8 conducting an inspection."  
 9 A Sounds to me like they can look around and  
 10 seize anything that they want to.  
 11 Q I mean, it doesn't say the law enforcement  
 12 officers can look around for evidence,  
 13 correct?  
 14 MS. BAUMGARDNER: Objection.  
 15 A It doesn't use those words.  
 16 Q It says the officers may seize any evidence?  
 17 A Right.  
 18 Q Do you see in number three that it says, "The  
 19 inspection should not be conducted so as to  
 20 unreasonable disrupt the operations of the  
 21 establishment"?  
 22 A Yes.  
 23 Q I have no further questions at this time.  
 24 MS. BAUMGARDNER: Just have one more  
 25 follow-up.

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1 FURTHER REDIRECT EXAMINATION  
 2 By Ms. Baumgardner:  
 3 Q G, as you pointed out, states,  
 4 "Notwithstanding any provision of this part or  
 5 any other regulation;" is that correct?  
 6 A Yes.  
 7 Q So although Mr. Bladuell pointed out three, G  
 8 says notwithstanding any other provision?  
 9 A It does.  
 10 MS. BAUMGARDNER: I have nothing  
 11 further.  
 12 MR. BLADUELL: Okay.  
 13 (Deposition concluded at 5:25 p.m.)  
 14 (Signature waived.)  
 15 - - -  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25

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1 State of Ohio, )  
 ) SS: CERTIFICATE  
 2 County of Cuyahoga, )  
 3 I, Karen A. Toth, RPR and Notary Public  
 4 in and for the State of Ohio, duly commissioned and  
 5 qualified, do hereby certify that the within named  
 6 witness, Dave Levingston, was by me first duly sworn  
 7 to testify the truth, the whole truth, and nothing  
 8 but the truth in the cause aforesaid; that the  
 9 testimony then given by him was by me reduced to  
 10 stenotypy/computer in the presence of said witness,  
 11 afterward transcribed, and that the foregoing is a  
 12 true and correct transcript of the testimony so  
 13 given by him as aforesaid.  
 14 I do further certify that this deposition was  
 15 taken at the time and place in the foregoing caption  
 16 specified and was completed without adjournment  
 17 I do further certify that I am not a relative,  
 18 counsel, or attorney of either party, or otherwise  
 19 interested in the event of this action.  
 20 IN WITNESS WHEREOF, I have hereunto set my  
 21 hand and affixed my seal of office at Cleveland,  
 22 Ohio on this 8th day of April, 2013.  
 23  
 24 Karen A. Toth, RPR and Notary Public in  
 and for the State of Ohio.  
 25 My Commission expires May 6, 2013.

55 (Pages 217 to 219)



Compressed Transcript of the Testimony of  
**EUGENE H. MOPSIK, 3/19/13**

**Case:** Free Speech Coalition, Inc., et al., v. Holder, Jr.

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<p>1 A That was my only source of income for 32</p> <p>2 years.</p> <p>3 Q How would you characterize the membership</p> <p>4 of your organization?</p> <p>5 A Clarify, please. Do you mean -- I guess</p> <p>6 my question would be what kind of work did they do?</p> <p>7 Are they happy? Are they sad? I'm not sure -- how</p> <p>8 would I characterize them? It depends on a lot of</p> <p>9 things.</p> <p>10 Q Well, they're all, I assume,</p> <p>11 photographers?</p> <p>12 A Most of our members are working</p> <p>13 photographers; some of them are students. We do</p> <p>14 have a student member category. We have different</p> <p>15 categories of membership.</p> <p>16 We have a full-time, working</p> <p>17 photographer category that comprises our voting</p> <p>18 membership. Then we have a kind of</p> <p>19 emerging-photographer category, we have a</p> <p>20 student-photographer category.</p> <p>21 We also have a category for</p> <p>22 affiliated people in the trades so that if someone</p> <p>23 from Nikon or Canon or Olympus or Adobe wanted to be</p> <p>24 tuned into what our association is doing, they could</p> <p>25 become an affiliate member.</p>	<p>1 primarily the digital vehicles which -- things like</p> <p>2 iPads and the web and other means of display, like</p> <p>3 motion. So photographers move to motion because</p> <p>4 that's what the medium wants.</p> <p>5 Q Do you think all of the photographers in</p> <p>6 your group that do video began as still</p> <p>7 photographers and then became --</p> <p>8 A Couldn't say all of them. I would say</p> <p>9 many of them were -- again, if you're looking at</p> <p>10 members prior to digital transition who were film</p> <p>11 shooters, they would first transition to digital and</p> <p>12 then along the way, given the technology of today's</p> <p>13 DSLR cameras, which have the capability to shoot</p> <p>14 both stills and HD video, it was a logical</p> <p>15 transition for them. So they kind of tested the</p> <p>16 water there.</p> <p>17 But we also have some members who</p> <p>18 are, I would grant it, probably a fairly small</p> <p>19 number who are strictly motion photographers.</p> <p>20 Q Could you describe the process for</p> <p>21 becoming a member?</p> <p>22 A Well, to become a voting -- let's start</p> <p>23 with voting member, which would be what we classify</p> <p>24 as a general member. So to be a general member of</p> <p>25 ASMP -- we're the only photographers association</p>
Page 10	Page 12
<p>1 Q Do the photographers in your organization</p> <p>2 work in a particular medium of photography? Is that</p> <p>3 the right --</p> <p>4 A Are you talking about whether it's sports</p> <p>5 or fashion or --</p> <p>6 Q What is the word that you use to indicate</p> <p>7 digital versus print versus video?</p> <p>8 A Well, almost all photographers today are</p> <p>9 working digitally. The ones who aren't doing it,</p> <p>10 either out of some technical necessity, which would</p> <p>11 be more in the case of architecture people who shoot</p> <p>12 large format material and then scan it immediately</p> <p>13 to digital format, but the capture would be in an</p> <p>14 analog means on film.</p> <p>15 But most photographers, their</p> <p>16 original capture or the original impression would be</p> <p>17 gathered digitally today.</p> <p>18 Q Does your membership include filmmakers as</p> <p>19 well as still photographers?</p> <p>20 A More and more still photographers are</p> <p>21 crossing over into motion work out of necessity and</p> <p>22 out of -- it's -- the old paradigm was images going</p> <p>23 to print. The new paradigm is images going to</p> <p>24 digital use.</p> <p>25 And so the digital formats, which is</p>	<p>1 that I'm aware of that you simply can't join by</p> <p>2 writing a check and saying I want to be a voting</p> <p>3 member.</p> <p>4 You need to, number one, have two</p> <p>5 member sponsors, you need to show a body of work</p> <p>6 that indicates you've worked as a professional for a</p> <p>7 period of three years, and you need to make the</p> <p>8 majority of your earned income from the sale or</p> <p>9 license of your images.</p> <p>10 (Exhibit Mopsik-1 was marked</p> <p>11 for identification.)</p> <p>12 MS. WYER: Let the record reflect I've</p> <p>13 marked an exhibit as Mopsik-1.</p> <p>14 BY MS. WYER:</p> <p>15 Q Do you recognize this?</p> <p>16 A It appears to be a capture from our</p> <p>17 application page on the website. I think that's</p> <p>18 what it is.</p> <p>19 Q Is this the application form that someone</p> <p>20 would have to fill out to become a member?</p> <p>21 A Well, it's part of it for general members.</p> <p>22 Because for a general member, if they were to fill</p> <p>23 this out and submit it what happens is that triggers</p> <p>24 a response on our side that would go to the Chapter</p> <p>25 Membership Committee and then they would reach out,</p>

<p style="text-align: right;">Page 17</p> <p>1 a local level.</p> <p>2 Q What is the mission of ASMP?</p> <p>3 A Is to protect and promote the interests of</p> <p>4 working publication photographers, primarily through</p> <p>5 information, education and advocacy.</p> <p>6 Q Are there particular issues that you focus</p> <p>7 on?</p> <p>8 A If ASMP is known for anything over its</p> <p>9 years -- we were founded in 1944 by a group of</p> <p>10 primarily Jewish disgruntled socialist photographers</p> <p>11 who were bigtime photographers working primarily for</p> <p>12 Time Life and all the major news media. They</p> <p>13 weren't happy with what basically came down to rates</p> <p>14 and rights that they were getting. They were the, I</p> <p>15 guess, original -- you know, they kind of set the</p> <p>16 tone for ASMP's future.</p> <p>17 Today, I guess we're known as an</p> <p>18 association who, I guess, we're the leader in</p> <p>19 business and rights education for photographers. We</p> <p>20 do a number of seminars and programs, either through</p> <p>21 our chapters or through other trade events around</p> <p>22 the country, on an annual basis promoting various</p> <p>23 aspects of business practices for working</p> <p>24 photographers, along with trying to educate</p> <p>25 photographers regarding their copyright, copyright</p>	<p style="text-align: right;">Page 19</p> <p>1 corporate group, we have an underwater group, we</p> <p>2 have an architecture group, but they only meet</p> <p>3 virtually.</p> <p>4 Q What do they do in this virtual meeting?</p> <p>5 A Well, they're primarily list serves. They</p> <p>6 talk about trade issues, business issues. Sometimes</p> <p>7 it's technical discussions about craft, issues</p> <p>8 related to dealing with a particular circumstance on</p> <p>9 the job, be it lighting or technical or file</p> <p>10 processing or something or another.</p> <p>11 Other times it's about people have</p> <p>12 questions about what they might charge for a job or</p> <p>13 what other people charge for similar jobs, so they</p> <p>14 could get an idea of what they should be charging.</p> <p>15 Q Is there any official designation of</p> <p>16 someone when they join a group like that?</p> <p>17 A No official designation. In our database</p> <p>18 there's a field which would indicate whether or not</p> <p>19 they've designated themselves as a participant in</p> <p>20 that group, which would simply mean they've, in</p> <p>21 effect, logged in to that list serve.</p> <p>22 Q Can you be in more than one specialty</p> <p>23 group?</p> <p>24 A Yes.</p> <p>25 Q They can just decide to join themselves?</p>
<p style="text-align: right;">Page 18</p> <p>1 issues, and the value of their rights.</p> <p>2 Q So when you say "rights," do you mean --</p> <p>3 A Intellectual property rights.</p> <p>4 Q Other than the geographical chapters, is</p> <p>5 there any other kind of subdivision? Are there</p> <p>6 subdivisions within the organization?</p> <p>7 A No.</p> <p>8 Q Are there subgroups?</p> <p>9 A Not officially. So a school like Brooks</p> <p>10 or RIT or SCAD, they're all college-level programs</p> <p>11 with significant photography departments.</p> <p>12 Unofficially they may have what they call a student</p> <p>13 chapter. They don't exist on our books anywhere as</p> <p>14 a student chapter. They're basically a student</p> <p>15 group that would be tied to the nearest actual</p> <p>16 chapter.</p> <p>17 But when I have a significant number</p> <p>18 of students, they sometimes think of themselves as a</p> <p>19 chapter, but they're not officially.</p> <p>20 Q Are there groups based on subject matter?</p> <p>21 A Virtual, not actual.</p> <p>22 Q What does that mean?</p> <p>23 A Means we have online communities. We have</p> <p>24 specialty groups that exist only in the virtual</p> <p>25 world. So we have a fine art group, we have a</p>	<p style="text-align: right;">Page 20</p> <p>1 A Yes.</p> <p>2 Q Do your members create depictions of</p> <p>3 sexually-explicit conduct? When I say</p> <p>4 "sexually-explicit conduct" I mean as defined under</p> <p>5 the 2257 requirements. First of all, are you</p> <p>6 familiar with 2257?</p> <p>7 A Yeah, basically I am. I would say yes.</p> <p>8 Q Do you know if any of your members qualify</p> <p>9 as secondary producers?</p> <p>10 MS. BAUMGARDNER: Objection. If you know</p> <p>11 what that is, Mr. Mopsik. But go ahead and</p> <p>12 answer. I'm just objecting for the record.</p> <p>13 THE WITNESS: I'm not sure what that</p> <p>14 means, if that's a distributor or some other</p> <p>15 level of involved in the production chain of</p> <p>16 that material.</p> <p>17 If that's what you're asking, then again I</p> <p>18 have no firsthand knowledge of that. But I</p> <p>19 wouldn't be surprised, I guess, either.</p> <p>20 BY MS. WYER:</p> <p>21 Q Okay. So you're not familiar with the</p> <p>22 term "secondary producer" in the 2257 context?</p> <p>23 A No.</p> <p>24 Q What percentage of your membership creates</p> <p>25 images that are covered under 2257 or 2257A?</p>

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<p>1 members who create depictions of sexually-explicit 2 conduct in the context of health or medical 3 related -- 4 A Again, I don't know the specific members 5 who were doing this. I know we have a lot of -- I 6 guess a significant number of members who are 7 involved in, you know, work related to the 8 healthcare trade, hospital and mental health areas. 9 We also have a significant number of 10 photographers who supply images for textbooks, which 11 is a major source of income for many photographers. 12 But specifically in regard to this type of images, 13 no. 14 Q What about ASMP members who create 15 depictions of sexually-explicit conduct as part of 16 the adult film industry? 17 A Yeah, I don't -- I'm not familiar with 18 them. I would assume that -- again, through our 19 responses -- that there are a small number of ASMP 20 members who actually contribute to the adult film or 21 adult entertainment industry, but I'm not familiar 22 with them. 23 Q And by "adult film industry," you mean 24 what others might call hardcore pornography films? 25 A Producing sexually-explicit films.</p>	<p>1 I'm not familiar. But I would assume that they 2 exist. 3 Q So you can't think of any examples for any 4 ASMP members in this category of independent film 5 productions in adult entertainment? 6 A Me personally, no, I can't. 7 MS. WYER: We can take a break now. 8 MS. BAUMGARDNER: Okay. Thank you very 9 much. 10 (Brief recess.) 11 BY MS. WYER: 12 Q So continuing -- and for the record, we 13 just took a break. Now we're back and going back to 14 the response to Interrogatory number 7. 15 The next sentence states, Some of our 16 members create erotic portraits commissioned by 17 adult couples or individuals for their own private 18 use. 19 Did I read that accurately? 20 A Mm-hmm. Yes. 21 Q What is this sentence referring to? 22 A I would -- my understanding would be, and 23 again I'm not -- I don't have direct knowledge of 24 particular members who do this, but I'm aware of, I 25 guess, this genre of work, and I guess it would</p>
Page 38	Page 40
<p>1 Q Can ASMP members -- nothing prevents 2 someone who produces adult films from being an ASMP 3 member, correct? 4 A Correct. Assuming they have good business 5 practices, they meet the requirements for 6 membership, then they can be a member. 7 MS. BAUMGARDNER: I don't mean to 8 interrupt, when you have a moment, I could use 9 a break. If you need to finish, I don't want 10 to interrupt your flow here. 11 MS. WYER: I'll just finish the last 12 category he mentioned and we can... 13 MS. BAUMGARDNER: I appreciate it. 14 BY MS. WYER: 15 Q The last category you mentioned was the 16 sexual and psychological counseling. Do you know of 17 any examples of ASMP members who create depictions 18 of sexually-explicit conduct in that context? 19 A Again, I'm not familiar with the 20 photographers personally, but again I think it would 21 fall under images that end up being used primarily 22 in textbooks and perhaps again in videos. 23 I haven't -- I guess I haven't seen 24 the kinds of video productions that are used to 25 counsel people for sexual or psychosexual issues, so</p>	<p>1 revolve around couples who, for one reason or 2 another, want erotic portraits of each other, either 3 of one partner or the other or both together as a 4 gift memento, remembrance of the other partner. 5 Q Do you know how many ASMP members are in 6 this category? 7 A No. 8 Q Can you name any examples? 9 A No. 10 Q Do you know if the ASMP members in this 11 category know the individuals that they are 12 photographing? 13 A Yes. 14 Q You know -- 15 A Would believe, just because my members are 16 professionals. They wouldn't be randomly 17 photographing people in erotic circumstances. These 18 would be commissioned works. So, I mean, whether 19 they know them -- they're not bosom buddies; they're 20 clients. 21 Q So they would not necessarily know them 22 beforehand, they would just be hired to take -- 23 A Clients. Client/photographer 24 relationship. 25 Q So if there were any -- if we could</p>



Page 45	Page 47
<p>1 results list who would be involved in creating</p> <p>2 depictions of sexually-explicit conduct?</p> <p>3 A No. Did you do a search for anything to</p> <p>4 see what the returns looked like?</p> <p>5 Q I'm not sure.</p> <p>6 How many ASMP members are currently</p> <p>7 maintaining records under 18 USC 2257 or 2257A?</p> <p>8 MS. BAUMGARDNER: Objection.</p> <p>9 THE WITNESS: I have no knowledge.</p> <p>10 BY MS. WYER:</p> <p>11 Q Does ASMP provide any guidance to its</p> <p>12 members on maintaining records under 2257 or 2257A</p> <p>13 or otherwise complying with the 2257, 2257A</p> <p>14 requirements?</p> <p>15 A I think in general ASMP promotes good</p> <p>16 business practices and professionalism. I believe</p> <p>17 in the article that appeared in our magazine, we</p> <p>18 advised our members regarding this matter.</p> <p>19 I don't believe we have any other</p> <p>20 information on it, on our website to my knowledge.</p> <p>21 Q And this article was around three months</p> <p>22 ago?</p> <p>23 A I think that was within the last three or</p> <p>24 four months. Can I ask --</p> <p>25 MS. BAUMGARDNER: You can't ask me, no.</p>	<p>1 Q What is the purpose of a model release?</p> <p>2 A I guess in this context -- first of all,</p> <p>3 again, ASMP is built on a foundation of good</p> <p>4 business practices. So our photographers are</p> <p>5 professionals. Many of the subjects that -- I guess</p> <p>6 under most circumstances professional photographers</p> <p>7 don't go trolling the streets for models. They call</p> <p>8 up an agency and they have a casting call and they</p> <p>9 send models.</p> <p>10 So these are people who are being</p> <p>11 compensated through an agency for appearing in</p> <p>12 whatever the particular vehicle is, whether it's</p> <p>13 advertising, editorial, corporate. Our</p> <p>14 photographers need a release for a number of</p> <p>15 reasons.</p> <p>16 One, I guess in this context to</p> <p>17 ascertain that the person is of age of majority and</p> <p>18 able to sign their right. What's happening is the</p> <p>19 model is assigning a publication right to the</p> <p>20 photographer, which the photographer then reassigns</p> <p>21 to his client. So that model release is, in fact, a</p> <p>22 release of rights, a grant of rights, to the</p> <p>23 photographer.</p> <p>24 So those are the purposes, the basic</p> <p>25 purposes of it.</p>
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<p>1 THE WITNESS: I can't communicate with</p> <p>2 counsel. I don't know the exact date when that</p> <p>3 appeared. I know it was an article by Victor</p> <p>4 Perlman in our ASMP bulletin.</p> <p>5 BY MS. WYER:</p> <p>6 Q Are those bulletins available on your</p> <p>7 website?</p> <p>8 A They are.</p> <p>9 Q Was that the first time that ASMP has ever</p> <p>10 mentioned 2257, 2257A to its members?</p> <p>11 A To my knowledge, it probably was. Other</p> <p>12 than -- I mean, I'm not sure -- well, it probably</p> <p>13 was.</p> <p>14 Q I'd like to go back to the Interrogatories</p> <p>15 which are Exhibit 3.</p> <p>16 A (Witness complies.)</p> <p>17 Q So going to Interrogatory 8 which starts</p> <p>18 on page 4.</p> <p>19 A Mm-hmm.</p> <p>20 Q The response states, Our members never</p> <p>21 photograph minors in sexual conduct. We advise all</p> <p>22 of our members to attain model releases for any</p> <p>23 person they photograph.</p> <p>24 Did I read that accurately?</p> <p>25 A Correct.</p>	<p>1 Q And an ASMP member can get a model release</p> <p>2 for someone under 18, correct?</p> <p>3 A We have it on our website, a minor</p> <p>4 release.</p> <p>5 Q In that context, who would sign the</p> <p>6 release?</p> <p>7 A Parent or guardian.</p> <p>8 Q But then sometimes individuals younger</p> <p>9 than 18 can sign their own release, correct?</p> <p>10 A Anybody can do anything.</p> <p>11 Q Sometimes individuals under 18 are legally</p> <p>12 able to sign their own release, correct?</p> <p>13 A I'm not aware of that. I mean, I guess --</p> <p>14 legal? You're the lawyer. Are there legal</p> <p>15 circumstances where someone who is under the age of</p> <p>16 majority is actually of the age of majority, I</p> <p>17 guess, or emancipated? Is that what we're talking</p> <p>18 about here?</p> <p>19 Q Well, let's look at another exhibit from</p> <p>20 the website.</p> <p>21 A Emancipated minors?</p> <p>22 (Exhibit Mopsik-5 was marked</p> <p>23 for identification.)</p> <p>24 BY MS. WYER:</p> <p>25 Q Do you recognize this?</p>

Page 53	Page 55
<p>1 to check IDs?</p> <p>2 MS. BAUMGARDNER: Objection.</p> <p>3 If you understand the question...</p> <p>4 THE WITNESS: Yeah, I would ask for a</p> <p>5 clarification.</p> <p>6 BY MS. WYER:</p> <p>7 Q Under a common-sense approach, should an</p> <p>8 ASMP member always check IDs for individuals who are</p> <p>9 under a particular age?</p> <p>10 A Again, my members are professionals. It's</p> <p>11 in their best interest to acquire the rights and</p> <p>12 permissions that they need in order to be able to</p> <p>13 fulfill the requirements of the job; therefore, it</p> <p>14 would be my assertion that if they had any question</p> <p>15 as to the age of majority of the subject, they would</p> <p>16 ask for adequate ID.</p> <p>17 Q Is it possible that different ASMP members</p> <p>18 would have a question -- one ASMP member might have</p> <p>19 a question in regard to an individual while another</p> <p>20 member wouldn't?</p> <p>21 A Is that possible? Yes. And pigs can fly.</p> <p>22 Anything is possible.</p> <p>23 Q Do you think every ASMP member would check</p> <p>24 an ID for the same -- when presented with a</p> <p>25 particular individual, do you think every ASMP</p>	<p>1 Q And when photographers are trying to get</p> <p>2 model releases, that's their concern, correct?</p> <p>3 A I guess, again, as professionals their</p> <p>4 concern is fulfilling the obligations of the job.</p> <p>5 So...</p> <p>6 Q Which in the commercial context is</p> <p>7 obtaining an image that they can --</p> <p>8 A Provide the client with proper rights and</p> <p>9 clearances to use the images that are produced.</p> <p>10 Q Is it ASMP's position that it's possible</p> <p>11 to determine a person's age by visual observation?</p> <p>12 A I would say not in all cases, no. Some</p> <p>13 people appear younger than others.</p> <p>14 Q And ASMP has not set a cutoff age under</p> <p>15 which its members are required to check IDs,</p> <p>16 correct?</p> <p>17 A Correct. We have no means to compel our</p> <p>18 members to do anything. I guess we're specifically</p> <p>19 limited by the Justice Department in many ways in</p> <p>20 engaging in any form of collective action.</p> <p>21 Q Let's go back to Exhibit 3, Interrogatory</p> <p>22 number 9.</p> <p>23 A (Witness complies.)</p> <p>24 Q In Interrogatory number 9 -- I'll give you</p> <p>25 a minute to look at it. In ASMP's response to that</p>
Page 54	Page 56
<p>1 member would check that individual's ID or not?</p> <p>2 A Again, I would go back to my original</p> <p>3 statement that my members are professionals, they</p> <p>4 need to do what they need to do to fulfill the</p> <p>5 requirements of the job. So again, photographers</p> <p>6 are as risk averse as clients. That being said, my</p> <p>7 position would be if they had any questions, they</p> <p>8 would ask for ID.</p> <p>9 Q So as you were saying, the risk if an ASMP</p> <p>10 member doesn't check an ID when the person -- when</p> <p>11 the individual being depicted in an image is not --</p> <p>12 is under 18 and can't enter into a contract, the</p> <p>13 risk in that context is simply that the photographer</p> <p>14 would not be able to use that image in a commercial</p> <p>15 context, correct?</p> <p>16 A And assuming that it's a commercial</p> <p>17 assignment that he's involved in, that then his</p> <p>18 client wouldn't be able to use the image. There are</p> <p>19 different levels of use within photography.</p> <p>20 So there's the primary use, the</p> <p>21 commissioned use for the job, and then there are</p> <p>22 secondary uses that become available to</p> <p>23 photographers sublicensing and secondary licensing</p> <p>24 of images after the fact. So neither would be</p> <p>25 available if you don't have a valid release.</p>	<p>1 Interrogatory it states: Hundreds of our members</p> <p>2 take photographs of the nude human body and sexual</p> <p>3 conduct. Given that fact, I believe that there are</p> <p>4 more than a thousand images in each of the age</p> <p>5 categories designated above.</p> <p>6 Did I read that accurately?</p> <p>7 A Correct.</p> <p>8 Q And age categories designated above are 18</p> <p>9 to 25; 26 to 35; 36 to 45; 46 to 55; 56 to 65; and</p> <p>10 over 65, correct?</p> <p>11 A Correct.</p> <p>12 Q And this question is asking about</p> <p>13 depictions of sexually-explicit conduct, correct?</p> <p>14 A Actual or simulated sexually-explicit</p> <p>15 conduct.</p> <p>16 Q So this response is essentially saying</p> <p>17 that ASMP members, that there are more than a</p> <p>18 thousand images produced by ASMP members of</p> <p>19 sexually-explicit conduct in each of these age</p> <p>20 categories, correct?</p> <p>21 A Correct.</p> <p>22 Q How did ASMP make that determination?</p> <p>23 MS. BAUMGARDNER: Objection.</p> <p>24 THE WITNESS: I did not make this</p> <p>25 determination, but my judgment would come just</p>

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<p>1 from my understanding of how photographers work</p> <p>2 and what's involved in creating or fulfilling</p> <p>3 the requirements of any particular assignment.</p> <p>4 There are generally many more images</p> <p>5 created than are actually needed to fulfill the</p> <p>6 specific job requirement. It's just the nature</p> <p>7 of the way photographers work. They create</p> <p>8 many images to fulfill the one requirement. So</p> <p>9 I think that's probably -- so it doesn't take</p> <p>10 long to get to a thousand.</p> <p>11 BY MS. WYER:</p> <p>12 Q So you understand this response as</p> <p>13 including every individual image in a single shoot,</p> <p>14 model shoot, as a separate image?</p> <p>15 A They are separate images.</p> <p>16 Q So the number a thousand is not a high</p> <p>17 number in this context?</p> <p>18 MS. BAUMGARDNER: Objection.</p> <p>19 THE WITNESS: I would say you are correct.</p> <p>20 BY MS. WYER:</p> <p>21 Q For this response can you be more specific</p> <p>22 in regard to which age categories have a larger</p> <p>23 number or fewer images?</p> <p>24 A No.</p> <p>25 Q Do you have any way of making that</p>	<p>1 Q Let's now look at Interrogatory number 10</p> <p>2 in the same exhibit, which is just the next one</p> <p>3 down.</p> <p>4 A (Witness complies.)</p> <p>5 Q In the second paragraph of the response, I</p> <p>6 think fourth sentence states: Photojournalists who</p> <p>7 are on the road for months at a time are simply</p> <p>8 unable to maintain and categorize the records as the</p> <p>9 statutes and regulations require.</p> <p>10 Did I read that accurately?</p> <p>11 A Yes.</p> <p>12 Q What do you mean by this?</p> <p>13 A To my understanding, it means that</p> <p>14 photographers who travel extensively who may either</p> <p>15 be in areas of conflict or may simply be out on</p> <p>16 location for a protracted period of time -- I</p> <p>17 frequently went out for two, three weeks at a time</p> <p>18 as an industrial photographer.</p> <p>19 Photographers involved in conflict or</p> <p>20 other areas sometimes go for months at a time. I</p> <p>21 don't know how they could possibly fulfill the</p> <p>22 requirements of this statute, how they would make</p> <p>23 records available 20 hours a week.</p> <p>24 The simple act of having to record or</p> <p>25 to maintain all of those records in some type of</p>
Page 58	Page 60
<p>1 determination?</p> <p>2 A No.</p> <p>3 Q So you cannot provide us with information</p> <p>4 that shows the range of ages of individuals depicted</p> <p>5 in the depictions of sexually-explicit conduct</p> <p>6 produced by your members; is that correct?</p> <p>7 A State the question again.</p> <p>8 Q You cannot provide us with information</p> <p>9 that indicates the range of ages of individuals</p> <p>10 appearing in depictions of sexually-explicit conduct</p> <p>11 produced by your members?</p> <p>12 A At this time, no, I can't.</p> <p>13 Q Do you have any way of doing that in the</p> <p>14 future?</p> <p>15 MS. BAUMGARDNER: Objection.</p> <p>16 THE WITNESS: I guess theoretically we</p> <p>17 could survey our members. I know of no other</p> <p>18 way to...</p> <p>19 BY MS. WYER:</p> <p>20 Q Do you have any way of requiring your</p> <p>21 members to respond?</p> <p>22 A No. We're a trade association. We have</p> <p>23 no force. We're not -- we're not, we're not rights</p> <p>24 holders. We're not -- we have no compelling force</p> <p>25 over our members.</p>	<p>1 searchable database while on the road, I think, is</p> <p>2 incredibly burdensome.</p> <p>3 It's hard enough getting the releases</p> <p>4 they require, but to have to do all of this extra</p> <p>5 record keeping and, again, make those records</p> <p>6 available -- we're dealing with, again, one- and</p> <p>7 two-man shops who are already extraordinarily</p> <p>8 burdened by the blessing of digital photography.</p> <p>9 The world said it was going to be</p> <p>10 better, faster, cheaper. It may be better and the</p> <p>11 capture may be faster, but the post-production is</p> <p>12 considerably more burdensome on a photographer</p> <p>13 today. Previously you shot film and gave it to a</p> <p>14 client. At the end you gave him transparencies and</p> <p>15 you were done.</p> <p>16 Now, all that post-production work</p> <p>17 that was previously done by third parties is now</p> <p>18 done by the photographer. So the photographer does</p> <p>19 the retouching, photographer does the file prep, the</p> <p>20 photographer creates the print files, the output</p> <p>21 files. And he may or may not be compensated for</p> <p>22 that work, but he's still got to do it all.</p> <p>23 And so the job doesn't end when the</p> <p>24 shoot ends. It was much easier when you were</p> <p>25 dealing with film and transparencies. So things</p>

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<p>1 A Again, I would defer to Victor Perlman, 2 but I'm not sure that he would know either. 3 Q Has ASMP issued any press release 4 regarding this litigation or its participation in 5 this litigation? 6 A Not that I'm aware of. I think we 7 mentioned it in a -- may have mentioned it in an 8 e-news, but I don't believe we've issued any press 9 release. 10 (Exhibit Mopsik-6 was marked 11 for identification.) 12 BY MS. WYER: 13 Q You've been handed what's been marked as 14 Exhibit Mopsik-6. Do you recognize this? 15 A It says it's the -- our list of press 16 releases. 17 Q Do you see that this list of press 18 releases goes to the most recent one, March 7, 2013? 19 A Mm-hmm. 20 Q Actually there's one section of the 21 website called Recent Releases and another that has 22 Prior Releases, so there's another -- 23 A Right. 24 Q -- that starts on page 5, starts again at 25 page 1 because it's from the non-recent releases</p>	<p>1 requirements. Do you understand what that means? 2 A No. 3 Q That the requirements violate the First 4 Amendment as applied to ASMP? 5 MS. BAUMGARDNER: I object. This is a 6 legal question that you're asking him. It's a 7 legal term. 8 BY MS. WYER: 9 Q Do you understand what I mean by the 10 question? 11 A I mean, my understanding would be that 12 you've said we've made a challenge on the basis of 13 the First Amendment as it applies to ASMP members. 14 Q So if ASMP were to prevail or were to win 15 on that applied challenge, is there anything that 16 would stop producers from the hardcore adult 17 industry from joining ASMP? 18 MS. BAUMGARDNER: Objection. 19 Do you understand the question? 20 THE WITNESS: Well, is there anything that 21 would -- so you want to know if there's 22 anything that would prevent a producer of 23 hardcore pornography from becoming a member of 24 ASMP if we were to prevail in this 25 constitutional challenge; is that correct?</p>
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<p>1 section, correct? 2 A Mm-hmm. 3 Q And that section goes from December 15, 4 2011, back to November 19, 2008? 5 A Okay, I got it. 6 Q Are you aware of any press release issued 7 by ASMP regarding this litigation during that time? 8 A If there is one in here, I don't recall 9 it. 10 Q If there is not one in here, would that 11 indicate there was no such press release? 12 A Assuming that the guy who puts them up on 13 the website was doing his job, yeah. I mean, this 14 is the only record we keep of our releases. Is 15 there one in here? 16 Q If you want to try to find one -- can you? 17 MS. BAUMGARDNER: Can you direct his 18 attention to any particular one? 19 MS. WYER: I'm not able to. 20 THE WITNESS: I didn't recall one. 21 Commented on a lot of other things of 22 significant importance. 23 BY MS. WYER: 24 Q ASMP has brought and has applied First 25 Amendment challenge to the 2257 and 2257A</p>	<p>1 BY MS. WYER: 2 Q You've already indicated that filmmakers 3 who make what could be characterized as hardcore 4 sexually-explicit films could become ASMP members? 5 A "Could" is the operative word, yeah. 6 There's no restriction in our bylaws that says 7 producers of sexually-explicit materials cannot be 8 members. 9 Q Going back to the relationship between 10 ASMP and its membership, are there rules that ASMP 11 has established to govern the conduct of its 12 members? 13 A There is a code of ethics on the website. 14 I don't know exactly where it is, but there is one. 15 Q Is there any specific role in that code of 16 ethics that prohibits ASMP members from using 17 individuals under 18 in depictions of 18 sexually-explicit conduct? 19 A I don't believe that any of the code would 20 specifically state that. It would state that 21 members are to be professional, that they are, I 22 guess -- I don't even know -- I guess it would go 23 without saying that they're expected to uphold the 24 laws of the land. 25 And if, in fact, which it is, you</p>

**In The Matter Of:**  
*FREE SPEECH COALITION, INC v*  
*THE HONORABLE ERIC H. HOLDER*

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*March 16, 2013*

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*SOUTHERN DISTRICT REPORTERS*  
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*212 805-0330*

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<p>1 Nitke</p> <p>2 in the way that producers --</p> <p>3 A. No.</p> <p>4 Q. -- checked the ages of performers?</p> <p>5 A. No. The producers were always</p> <p>6 scrupulous. It was always a very big deal.</p> <p>7 Q. They always checked the ID cards even</p> <p>8 before 2257 went into effect, is that right?</p> <p>9 A. Yes.</p> <p>10 Q. And they always had model releases</p> <p>11 even before 2257?</p> <p>12 A. Absolutely.</p> <p>13 Q. Let's look at interrogatory 15. It is</p> <p>14 on page 4. We are just looking at the answer I</p> <p>15 don't know if you need to look at the question</p> <p>16 to understand the question?</p> <p>17 A. All right.</p> <p>18 Q. In the answer you say, "I have created</p> <p>19 a large body of sexual artwork from 1982 to the</p> <p>20 present that involves approximately 425 people."</p> <p>21 Correct?</p> <p>22 A. Correct.</p> <p>23 Q. Did I read that correctly?</p> <p>24 A. Yes.</p> <p>25 Q. How did you determine the number</p>	<p>1 Nitke</p> <p>2 photographs on the adult film sets do you think?</p> <p>3 A. So you are asking how many were after</p> <p>4 say '95 as opposed to before? I am not sure I</p> <p>5 understand.</p> <p>6 Q. Well, just how many were from that</p> <p>7 period when you were taking the photographs on</p> <p>8 the adult film sets, which you have said</p> <p>9 occurred between 1983 and sometime in the</p> <p>10 mid-'90s?</p> <p>11 A. Do you want to give me a minute to see</p> <p>12 if I can calculate this out again?</p> <p>13 Q. If you want to.</p> <p>14 A. Yes, could I have a pencil and paper.</p> <p>15 MS. BAUMGARDNER: Would it be easier</p> <p>16 to do it backwards from since '95 on, when 2257</p> <p>17 took effect? I mean, Kathy, it is your</p> <p>18 question.</p> <p>19 THE WITNESS: I just have to go back</p> <p>20 over how I figured it out, so I would need a</p> <p>21 pencil and paper and a few minutes.</p> <p>22 MS. BAUMGARDNER: Can we go off the</p> <p>23 record then and let her make the calculation.</p> <p>24 MS. WYER: Sure.</p> <p>25 (Discussion off the record)</p>
Page 18	Page 20
<p>1 Nitke</p> <p>2 approximately 425?</p> <p>3 A. I guessed.</p> <p>4 Q. How did you guess?</p> <p>5 A. I just thought over how many people</p> <p>6 might have been in 300 movies, plus the work I</p> <p>7 did after that.</p> <p>8 Q. So you have 300 movies. How many</p> <p>9 individuals in each movie do you think?</p> <p>10 A. A lot of them are in more than one</p> <p>11 movie, right, making it a little bit difficult</p> <p>12 to be accurate.</p> <p>13 How did I break it down? I don't</p> <p>14 remember.</p> <p>15 Q. So what would you say now about how</p> <p>16 many individuals?</p> <p>17 A. I would probably say the same thing.</p> <p>18 Q. How would you reach that figure now?</p> <p>19 A. I would guess.</p> <p>20 I mean outside of spending a couple of</p> <p>21 days, you know, trying to look at every title</p> <p>22 and remember who was in it, how would I do it</p> <p>23 other than guessing.</p> <p>24 Q. So how many of the 425 people were</p> <p>25 from that period when you were taking</p>	<p>1 Nitke</p> <p>2 Q. Let the record reflect that we have</p> <p>3 taken a break and Ms. Nitke has done a</p> <p>4 calculation on paper.</p> <p>5 Could you explain what process you</p> <p>6 have just gone through and what result you have</p> <p>7 reached?</p> <p>8 A. Yes. I am guessing that on the</p> <p>9 hardcore movies I worked on, which would be in</p> <p>10 New York from 1982 to 1991, I'm guessing there</p> <p>11 was approximately 50 to 100 people who were in</p> <p>12 that pool of actors that worked regularly at</p> <p>13 that time.</p> <p>14 Then I'm also guessing that from 1991</p> <p>15 to 1994, when I worked in fetish porn movies, we</p> <p>16 shot a lot more movies in a smaller time, and</p> <p>17 I'm guessing that there were also around 50 to</p> <p>18 100 people that were performers in that group.</p> <p>19 Then when I began photographing in the</p> <p>20 SM community, I think I shot around 150 people</p> <p>21 for my own artwork at that time.</p> <p>22 Q. What time period was that?</p> <p>23 A. That would be -- and that's the</p> <p>24 black-and-white work -- and that would be from</p> <p>25 1994 to 1998 or 1999.</p>

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1 Nitke  
2 Then I did another smaller body of  
3 work called Illimunata, and that was from 1999  
4 to 2007, and I think I probably added another 30  
5 to 50 people on top of the original 150 that I  
6 was shooting in that time period.  
7 Then, most recently, from 2007 to now,  
8 there are probably about 20 models that I have  
9 shot that could possibly fall within this  
10 grouping. They're mostly doing bondage, and I  
11 don't know whether they really fall into the  
12 category you are talking about or not.  
13 So that adds up to 370 to 470 people,  
14 that range.  
15 So that's how I came up with the 425.  
16 Q. You have a method.  
17 A. I have a method.  
18 MS. BAUMGARDNER: So that wasn't a  
19 guess. That was actually pretty good.  
20 THE WITNESS: I still think it's a  
21 guess, but yes.  
22 Q. The period from 1982 to 1991, you  
23 would describe that as the hardcore films  
24 period?  
25 A. Yes.

Page 22

1 Nitke  
2 Q. Are you saying that there was like a  
3 pool of regulars during that time?  
4 A. Yes.  
5 Q. Were you working only for certain  
6 directors?  
7 A. Yes.  
8 Q. So was this pool for certain  
9 directors, or was this pool general to the  
10 industry?  
11 A. I don't know. They were the people I  
12 knew.  
13 Q. And the fetish porn period that you  
14 described occurred from 1991 to 1994, how was  
15 that different from the hardcore porn industry,  
16 I mean just in terms of the industry that you  
17 were working within?  
18 A. It is a different segment of the  
19 industry.  
20 Q. Does that mean different -- I mean how  
21 do you know if it's one or the other?  
22 A. Well, they do different things in the  
23 movie.  
24 Q. So do different directors focus on a  
25 different category, hardcore or fetish? Is it

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1 Nitke  
2 by director?  
3 A. No, it's by genre. At the time they  
4 never had sex, they didn't have genital sex if  
5 it was a fetish movie. I don't know if that's  
6 still true, but at that time that was true. And  
7 rather than have sex they would do various BDSM  
8 activities.  
9 Q. Why were you working only in the  
10 hardcore type movies from 1982 to 1991 and then  
11 1991 to 1994 you were only working in fetish  
12 movies?  
13 A. That just reflects who was hiring me.  
14 Q. So the same people were not doing  
15 both? Some people were doing --  
16 A. No. Some people were doing both. It  
17 is just how I break down my own, my artwork  
18 categories.  
19 Q. The same people who were hiring you to  
20 do the still shots for the hardcore movies, did  
21 they later hire you to do work on fetish movies?  
22 A. In some cases.  
23 Q. But for some reason it just turned out  
24 that all of the fetish movies were in the '91 to  
25 '94 period?

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1 Nitke  
2 A. Yes.  
3 Q. Just kind of random or --  
4 A. I am not sure what you are asking.  
5 Q. I am just trying to understand the  
6 progression of your career. I guess I don't  
7 understand why all of the work that you got  
8 would be in one category and then suddenly be in  
9 a different category.  
10 A. The X-rated industry pretty much moved  
11 out to Los Angeles in the late '80s. So the  
12 amount of work I was getting on X-rated movies  
13 in New York started to dwindle.  
14 In the early '90s, there was an  
15 expansion of the fetish movie field, and there  
16 were some producers in New York still who made  
17 fetish movies, so they started hiring me. It  
18 was kind of a geographical thing, because there  
19 was almost no hardcore movies being shot in New  
20 York in the '90s.  
21 Q. Then in 1994 or the mid '90s, did the  
22 fetish porn industry also move?  
23 A. No. Let's see what happened there. I  
24 was asking for higher pay by the mid '90s and  
25 the people I was working for didn't want to pay

Page 25

1 Nitke  
2 more, so I just gradually quit working for them.  
3 Q. Then was it after that time that you  
4 began photographing SM? You described that  
5 period as 1994 to 1999?  
6 A. Correct.  
7 Q. How did you transition from, or do you  
8 see them as just a new thing that you started  
9 doing the BDSM?  
10 A. Yes.  
11 Q. How did you start doing that?  
12 A. I met some people in the BDSM world  
13 and started photographing them.  
14 Q. How did that happen? How did you  
15 start photographing them?  
16 A. I asked them. They let me photograph  
17 them.  
18 Q. What kinds of contexts were you in  
19 when this happened?  
20 A. Again, I'm just not sure, like what --  
21 Q. Were you walking down the street and  
22 you saw a person and you asked to photograph  
23 them? There must have been some --  
24 A. I was introduced to some people at a  
25 group called the Eulenspiegel Society here in

Page 26

1 Nitke  
2 New York, and I started going to their meetings  
3 and I met a lot of people there and I went to  
4 their parties and things like that.  
5 I formulated a concept that I wanted  
6 to photograph. I spent about six months just  
7 being with the people, and then I formulated  
8 something. I wanted to show them as romantic  
9 people who were expressing love for each other.  
10 So I started to talk to them about  
11 that and whether they would let me photograph  
12 them in a private setting, like their own homes  
13 or whatever, and some of them agreed and I  
14 started doing that.  
15 Q. Let's look at Interrogatory 8. I  
16 think this is a different exhibit.  
17 A. You mean not this one?  
18 Q. Yes. It is a different set.  
19 MS. WYER: I will mark this at Nitke  
20 2.  
21 (Nitke Exhibit 2 marked for  
22 identification)  
23 MS. BAUMGARDNER: Thank you.  
24 Q. On page 5 you say in the response to  
25 interrogatory 8 where the answer reads --

Page 27

1 Nitke  
2 speaking of the BDSM community, by the way,  
3 let's clarify, what does BDSM stand for?  
4 A. I knew you were going to ask that.  
5 BDSM is bondage, discipline, dominance  
6 submission, sadomasochism.  
7 Q. I think I get that.  
8 A. You can see the BD, bondage  
9 discipline, and the DS, DM, the SM,  
10 sadomasochism. It is a clever acronym.  
11 Q. The answer says, "This is a tightly  
12 knit community where everybody knows each other  
13 and where no one under 18 is ever allowed to  
14 join any of the groups or attend any events."  
15 Is that correct?  
16 A. Correct.  
17 Q. Why do you say that the community is  
18 tightly knit?  
19 A. It is a subculture where the people  
20 just are very close. They know each other.  
21 They are very intimate with each other. When  
22 someone new comes into the group, everyone kind  
23 of looks them over to see if they like them. So  
24 they are just tightly knit and close.  
25 Q. How many people are in the community?

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1 Nitke  
2 A. The Eulenspiegel Society at that time  
3 had close to a thousand members in New York --  
4 or the Eulenspiegel Society is in New York, the  
5 membership was not all New York. Some were in  
6 other parts of the country, but they had about a  
7 thousand members.  
8 Q. Do you know what "Eulenspiegel" means?  
9 A. I forget. It is from I believe an  
10 opera called Till Eulenspiegel. What does that  
11 character do? I forget. It is a German opera  
12 and there's this character named Till  
13 Eulenspiegel who does something or another and  
14 they took their name from that.  
15 Q. When you say the BDSM community, are  
16 you talking about the Eulenspiegel Society?  
17 A. Well, that was my main point of  
18 contact with the community. There are groups  
19 like that, but smaller ones, around the country.  
20 Q. So you think there were a thousand  
21 members of the Eulenspiegel Society?  
22 A. At that time. I think there were 900  
23 and some at that time.  
24 Q. In New York?  
25 A. They weren't all in New York, but the

Page 53

1 Nitke  
2 Q. Why do you know the --  
3 A. Because one of the models, I just  
4 remembered her age.  
5 Q. Are you able to make a complete  
6 breakdown of all of the ages of those  
7 individuals?  
8 A. I think I did.  
9 Q. Have you provided that to us?  
10 A. I think so.  
11 MS. WYER: I'd like to mark this as  
12 Nitke 3.  
13 (Nitke Exhibit 3 marked for  
14 identification)  
15 Q. I'm handing you what's been marked as  
16 Nitke 3.  
17 Do you recognize this?  
18 A. Yes.  
19 Q. It's titled "Model List."  
20 A. Right.  
21 Q. Is this something you provided to us  
22 in discovery?  
23 A. Uh-huh.  
24 MS. BAUMGARDNER: You have to answer  
25 verbally.

Page 54

1 Nitke  
2 A. Yes. Sorry.  
3 Q. What does this list represent?  
4 A. I believe what I was being asked is  
5 the date of birth and how many images I shot of  
6 people in a certain -- this is that from 2005 to  
7 2009, where I was asked to break down the models  
8 by their birth date.  
9 Q. I haven't counted how many there are.  
10 Let's see. 26. If I'm counting correctly there  
11 are 26 models identified here?  
12 A. No. Because some of those are  
13 repeats.  
14 Q. I didn't count every line.  
15 A. Are there 26 different models? OK.  
16 Do you want me to verify that? Can I just trust  
17 you?  
18 Q. If you want to count, you can go  
19 ahead.  
20 A. That takes a while to do, though. OK.  
21 Q. Now I'm getting 27. I have numbered  
22 them on the marked exhibit if you want to look  
23 at it. Did you want to look at it?  
24 A. It is a better method than mine.  
25 I mean, I guess accuracy matters. OK.

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1 Nitke  
2 It seems like there might.  
3 Q. I don't know if the C.M. is the same  
4 on --  
5 A. Oh, no. This is set up by -- oh, of  
6 course, that's right. I scrupulously set it up  
7 by, each model is in their group. Duh. OK.  
8 Sorry. Yes. That's right. It all comes back  
9 to me. It was a lot of work.  
10 Q. So there are 27 models?  
11 A. Are there? OK.  
12 Q. Identified here, right?  
13 A. Right.  
14 Q. I got to 27 here.  
15 A. OK.  
16 Q. This is from January 1, 2005, to  
17 December 31, 2009?  
18 A. Correct.  
19 Q. So this starts in the period when you  
20 were working on the Illimunata series, and then  
21 it covers part of the current, the Smooth Hotel  
22 project?  
23 A. Right.  
24 Q. So where is the cutoff? Would that  
25 be --

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1 Nitke  
2 A. Probably around 2008. I'm trying to  
3 remember.  
4 MS. BAUMGARDNER: Cutoff of what, just  
5 so I understand.  
6 MS. WYER: Between the two projects.  
7 A. That's wrong.  
8 Q. Between the Illimunata --  
9 A. I can tell by the titles. Polysexuals  
10 is the Smooth Hotel. So, yeah, 2008 is correct.  
11 That's when I started that. These are all the  
12 other ones. Polysexuals, 2008. Yeah, 2008.  
13 2007 on this is the cutoff, and 2008 begins the  
14 new project.  
15 Q. So anything where the title is  
16 Polysexuals, that refers to the Smooth Hotels  
17 project?  
18 A. Yes. So there are 11 models here.  
19 Q. You mean for the Smooth Hotels?  
20 A. Oh, no.  
21 Q. Then there's one, R.K., who appeared  
22 in both projects.  
23 A. He was in both.  
24 Q. So starting at D.P. at the bottom of  
25 the page, there's ten from D.P. to L.C. on the

Page 57

1 Nitke  
2 next page, and then R.K., so that's a total of  
3 11 --  
4 A. Correct.  
5 Q. -- from the Smooth Hotels project.  
6 Then there would be 16 plus R.K.  
7 again.  
8 So that's 17 from the Illuminata  
9 project. Do you think that's correct?  
10 A. Correct.  
11 Q. This is a complete list of all of  
12 the --  
13 A. There's one off, though. The 2007 Max  
14 and Too is kind of in neither one. But they're  
15 kind of, they are in an aborted idea that I  
16 never completed.  
17 Q. So even though your BDSM projects  
18 involved around 200 individuals from the period  
19 of 2005 through the end of the project you, only  
20 photographed 17 of those during that time  
21 period, is that right?  
22 A. I'm sorry. Ask it again. Can you ask  
23 it again.  
24 Q. The total number of individuals  
25 involved in the projects involving the BDSM

Page 58

1 Nitke  
2 community which were the black-and-white project  
3 and the Illuminata project, the total number  
4 that you identified was 200?  
5 A. Maximum.  
6 Q. Maximum. But during the period from  
7 January 1, 2005 through the end of that project,  
8 the Illuminata project, you only photographed 16  
9 of them?  
10 A. Correct.  
11 Q. Maybe 15?  
12 A. Right.  
13 Q. Because M.R. and P.C. were outside of  
14 that?  
15 A. Right.  
16 Q. Do you believe that this list of 15 is  
17 representative -- I mean it is hard to say that  
18 this list is representative of -- through this  
19 period it covers the end of one project and the  
20 beginning of another project, right?  
21 A. Right.  
22 Q. But this is a complete list --  
23 A. Correct.  
24 Q. -- of work that you photographed for  
25 the purpose of publishing?

Page 59

1 Nitke  
2 A. Correct.  
3 MS. WYER: I will mark this as Nitke  
4 4.  
5 (Nitke Exhibit 4 marked for  
6 identification)  
7 Q. I am handing you what's been marked as  
8 Nitke 4 to the witness. This is titled --  
9 A. I'm sorry. Before we start a new  
10 thing could I take a bathroom break.  
11 Q. Sure.  
12 (Recess)  
13 MS. WYER: Let the record reflect that  
14 we just took a short break and now we're back.  
15 Q. Previous to the break I handed you  
16 Exhibit Nitke 4, titled Shoot List.  
17 Do you recognize this?  
18 A. I do.  
19 Q. This was something that you provided  
20 to us?  
21 A. Yes.  
22 Q. What does this represent?  
23 A. These are the shoots that I did from  
24 2005 through 2009.  
25 Q. Are all of the individuals listed on

Page 60

1 Nitke  
2 the model list somewhere on the shoot list also?  
3 A. Yes.  
4 Q. And then on the shoot list you also  
5 indicate that there were, for example, the first  
6 line in February 2005 at the Winter Fire BDSM  
7 event, was that one of the conferences?  
8 A. Yes.  
9 Q. And you took 953 shots of around 100  
10 models for the models' private use?  
11 A. Correct.  
12 Q. That's what you described previously,  
13 where you took this other set of photographs  
14 that was not to be published, so you didn't keep  
15 2257 records for those?  
16 A. Correct.  
17 Q. Just to understand exactly, was this  
18 like at a baseball game where there is a  
19 photographer who takes your photograph and then  
20 asks you if you want a copy and then you order a  
21 copy, or was this something different?  
22 A. No. Well, again, they all operated  
23 maybe a little differently. But usually I would  
24 be at the event available to take pictures, and  
25 I would give the shots to the event coordinator



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1 Nitke  
2 so that they could share them with people as  
3 needed. Sometimes people would ask me to write  
4 a CD for them, and there would be a small charge  
5 for me to do that, but I would have to edit out  
6 their photos for them. But other times the  
7 event people would just do it for them.  
8 Q. In those cases you would provide these  
9 photographs to the event coordinator?  
10 A. Yes.  
11 Q. You said you didn't charge for your --  
12 did you receive a fee for when you were --  
13 A. No. They would let me go to the event  
14 for free in return for my taking pictures for  
15 people.  
16 Q. Then you would give the photographs of  
17 the event, including photographs of individuals,  
18 to the event coordinator and then that person  
19 would just allow the individuals to get copies?  
20 A. Correct.  
21 Q. So for this one involving M.R. and  
22 P.C., you listed the event --  
23 MS. BAUMGARDNER: Can you give the  
24 date.  
25 THE WITNESS: 2007.

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1 Nitke  
2 Q. The September 2007 Dark Odyssey BDSM  
3 event?  
4 A. Correct.  
5 Q. That's where the M.R. and P.C.  
6 individuals, the Max and Too photographs were  
7 taken?  
8 A. Right.  
9 Q. You said this was part of a project  
10 that you never completed?  
11 A. That's correct. I might use them for  
12 something one day, but --  
13 Q. Is this a complete list of all of the  
14 occurrences where -- I don't know what to call  
15 it -- all of the times when you took photographs  
16 involving depictions of sexually explicit  
17 conduct from January 1, 2005, to December 31,  
18 2009?  
19 A. It is a complete list of any shoots  
20 that I did that I think could possibly apply to  
21 the 2257 law.  
22 There's a lot of other shoots that I  
23 did that just would have no application, but in  
24 most of these cases they're not sexually  
25 explicit. They just have some SM content.

Page 63

1 Nitke  
2 Q. OK. Well --  
3 A. When you used the words "sexually  
4 explicit" are you meaning?  
5 Q. I am meaning whatever fits within the  
6 definition, that falls under the 2257  
7 requirements.  
8 A. OK. Then this is a complete list of  
9 that.  
10 Q. OK. So for the Smooth Hotels project  
11 you said there were, you think, 20 individuals  
12 involved in photographs in that project where  
13 the 2257 requirements may be implicated and 11  
14 of them are on this model list, right?  
15 A. That's right.  
16 Q. So there are nine other individuals  
17 who you must have photographed after December  
18 31, 2009?  
19 A. There may be less than 20. I think 20  
20 is the maximum.  
21 Q. Do you know the ages of the others? I  
22 mean, would it be possible to get just a list of  
23 whatever, since it is a small number of  
24 people --  
25 A. Sure.

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1 Nitke  
2 Q. -- could we just get the ages of those  
3 up to nine?  
4 MS. BAUMGARDNER: We will have to talk  
5 about that.  
6 MS. WYER: OK.  
7 Q. It seems like your work is focused  
8 kind of thematically. So we have the photos on  
9 the porn sets in the '80 through the mid '90s,  
10 and then there's the BDSM photos from around the  
11 mid-'90s through 2007, and now you're on a new  
12 project.  
13 Have you taken any other photos  
14 implicating 2257 other than those projects that  
15 we've already talked about?  
16 A. No.  
17 Q. After you are done with the Smooth  
18 Hotel project, you could go on to a different  
19 project?  
20 A. Yes.  
21 Q. But you don't even know what that is  
22 now?  
23 A. That's right.  
24 Q. So it could involve a completely  
25 different population of people?

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1 Nitke  
2 A. It could.  
3 Q. So you have no way of predicting today  
4 what group of people you might photograph in the  
5 future or where the photographs might implicate  
6 2257, is that right?  
7 MS. BAUMGARDNER: Objection. Go ahead  
8 and answer.  
9 A. I have no way of predicting. Yeah, I  
10 guess that's true.  
11 Q. Let's go back to the one that looks  
12 like this, what's been marked as Nitke 2, which  
13 are the responses to the first set of  
14 interrogatories. That one.  
15 A. OK.  
16 Q. Let's look at interrogatory 10, which  
17 is starting on page 6.  
18 A. OK.  
19 Q. I am actually looking at the top of  
20 page 7.  
21 MS. BAUMGARDNER: Why don't you read  
22 through it completely, and then Ms. Wyer can ask  
23 you questions about it.  
24 THE WITNESS: OK.  
25 A. OK.

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1 Nitke  
2 Q. Do you remember preparing this  
3 response?  
4 A. Yes.  
5 Q. You have now looked over your  
6 responses. Has that refreshed your memory about  
7 what you said?  
8 A. Yes.  
9 Q. I am just looking at the top of page  
10 7, where you say, "In order to comply with 18  
11 U.S.C. 2257 I make triplicate copies of all  
12 forms and required identification, which I keep  
13 in my home."  
14 Did I read that accurately?  
15 A. Yes.  
16 Q. Why do you keep triplicate copies?  
17 A. I have the original copy. Then I have  
18 a copy, which is in the filing system that I  
19 have set up, which cross-references the models  
20 with the alias names and all of that stuff.  
21 Then I have a second copy of that filing system  
22 in case anything happened to the first copy of  
23 it, and then I also have a set of the records  
24 that go into my storage locker.  
25 Q. So you actually have four copies of

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1 Nitke  
2 it?  
3 A. I have an original and three copies.  
4 Q. The one that you keep in the storage  
5 locker is just a backup?  
6 A. Yes.  
7 Q. Do you work only with paper copies?  
8 A. Correct.  
9 Q. You don't have a digital filing  
10 system?  
11 A. No.  
12 Q. Where are the original copies, the  
13 originals that are not copies?  
14 A. Some are in my home and some end up in  
15 storage after I have all the copies made.  
16 Q. Do you really have like two backups?  
17 You have the originals and a backup copy that  
18 you just keep?  
19 A. I have the original model release and  
20 the driver's license and the 2257 form. I make  
21 three copies of it when I do the filing, when I  
22 set up the files.  
23 As I'm setting up the files, I run off  
24 three copies out of my fax machine. I put the  
25 copies in folders, two sets of those folders for

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1 Nitke  
2 2257 files. I have two sets of that. Then  
3 there's another copy that goes in like the  
4 folder that has the shoot in it. Then  
5 eventually either a copy or an original lands up  
6 in my storage locker when I have time to get it  
7 up there.  
8 Q. So the copy that goes with the shoots,  
9 that's not part of the 2257 records? That's  
10 just your regular -- is that right? That's just  
11 part of your regular --  
12 A. No. Well -- meaning? I'm not sure.  
13 Q. Do you keep a copy of these documents  
14 just as part of your regular business records  
15 also?  
16 A. No, why would I -- no. The only thing  
17 I would do for my regular business records is  
18 have a model release.  
19 Q. So do you keep a copy of the model  
20 release with your business records?  
21 A. Yes. But if 2257 laws might apply,  
22 then I just have it all.  
23 Q. I wasn't clear what the third copy was  
24 or the second copy. You said you have the  
25 original, and for two of the copies that you

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1 Nitke  
2 Q. Did the publisher work with you in  
3 making that statement?  
4 A. No. Because I'm the publisher.  
5 Q. It is self-published?  
6 A. Yes.  
7 Q. Is Kiss of Fire also?  
8 A. No. That was published by a  
9 publisher.  
10 Q. Does that book have images from the  
11 BDSM black-and-white project?  
12 A. Yes.  
13 Q. That was after 1995, so you had 2257  
14 records for all of the images in that book?  
15 A. That's correct.  
16 Q. What was the publisher's involvement  
17 in putting a statement in that book?  
18 A. The publisher is a German publisher.  
19 They weren't aware of the law, but I told them  
20 we should put that statement in for American  
21 distribution.  
22 Q. So what is your understanding of the  
23 requirements for these statements based on?  
24 A. It is just based on what I understand,  
25 that you have to have a statement saying where

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1 Nitke  
2 the records are kept, stating that you have the  
3 records and where they're kept, and I got the  
4 wording from somebody. I don't know.  
5 Q. Did you do online research to try to  
6 figure this out?  
7 A. I asked around.  
8 Q. Was it as a result of asking around  
9 that you got the impression that you could not  
10 publish pre-1995 work in a book that also had  
11 post-1995 work covered by 2257 without going  
12 back and getting 2257 records for all of the  
13 pre-1995 work?  
14 A. Correct.  
15 Q. Do you remember who told you that?  
16 A. No, I don't.  
17 Q. But you understood that you could  
18 publish the pre-1995 work separately as long as  
19 it didn't have any post-1995 work in it in the  
20 same book?  
21 A. Yes. That's my understanding. I hope  
22 it's correct.  
23 Q. You could publish the post-1995 work  
24 separately with the 2257 --  
25 A. Yes. My understanding was when I was

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1 Nitke  
2 going to publish all four bodies of work, my  
3 understanding was that I would have to actually  
4 publish it in two volumes, before and after  
5 2257.  
6 Q. So you thought you could publish the  
7 whole compilation, but in two separate volumes?  
8 A. That was my understanding, yes.  
9 Q. So other than what you talk about in  
10 the response to interrogatory 10, is there  
11 anything else about the 2257 requirements that  
12 is a problem in your view?  
13 A. Wow. That is a great question.  
14 Actually, everything about the 2257 law is a  
15 problem to me.  
16 I would never photograph anyone under  
17 the age of 18 doing anything sexual or SM. I  
18 don't know a single person who would do that.  
19 It's completely and totally against the law.  
20 It's against my moral compass. The person isn't  
21 of age. They are not old enough to consent to  
22 it. It just would never happen in my lifetime  
23 or anyone I know.  
24 I resent the law to be honest. I  
25 totally resent it. It's just something that --

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1 Nitke  
2 it is just so not what I would ever do. It's  
3 almost like the law is accusing me of being a  
4 kiddy porn person unless someone holds my hand  
5 and makes me fill out a bunch of forms.  
6 The other thing I resent is that the  
7 law doesn't protect children, because anyone  
8 could be fooled by a fake ID anyway. And I  
9 think that my own system of knowing the people I  
10 photograph and making sure that I ask about  
11 them, that I use my judgment, that I talk to  
12 other people about who they are, I think is a  
13 far better system than this kind of regulation  
14 that isn't going to really accomplish protecting  
15 minors.  
16 I think if I thought about it I could  
17 come up with even more things that I resent.  
18 But I think those are the biggest issues, is  
19 that this is supposed to protect children and I  
20 don't think it does.  
21 Q. You described your own practices and  
22 that you do certain things to try to ensure or  
23 that make you feel that you are certain without  
24 checking IDs that individuals are over 18, is  
25 that right?

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1 Nitke

2 Q. This question asked, subsection a of

3 this question was asking how much money you have

4 spent per year for each of the past ten years

5 creating visual depictions of sexually explicit

6 conduct, excluding any time spent complying with

7 the 2257 requirements.

8 A. OK.

9 Q. Did I indicate that accurately?

10 A. That's correct.

11 Q. In the answer on page 4 when you say,

12 for example, that you are still at a loss on the

13 books, are the amounts listed in response to

14 interrogatory 14a, do those reflect your

15 expenses for those books?

16 A. No.

17 As I understood that question, as I

18 understood it, the question asked how much it

19 cost me, how much I spent creating visual

20 depictions, which I took to mean taking the

21 pictures. So what I added up was buying film,

22 renting cars to travel, if I had to pay a

23 location fee or something like that. That's

24 what these numbers are.

25 I didn't think that question applied

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1 Nitke

2 to publishing costs for a book, so I didn't put

3 that in here.

4 Q. OK.

5 A. Did you want it? Was it supposed to

6 be?

7 Q. No. I just wanted to understand how

8 you did that and what that meant.

9 A. OK.

10 Q. We have been talking until now about

11 your work producing images of sexually explicit

12 conduct covered by 2257, correct?

13 A. Correct.

14 Q. Where does that fit within your work

15 in general?

16 First of all, do you make your living

17 from photography?

18 A. I do.

19 Q. Is that the only income-producing

20 activity that you are engaged in?

21 A. Photography?

22 Q. Yes.

23 A. Yes.

24 Q. Do you have any related kinds of

25 activities that generate income, such as

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1 Nitke

2 teaching?

3 A. Yes, I do. I forgot. I do teach

4 photography. Thank you.

5 Q. Are you teaching now, currently?

6 A. I am. I teach a class at School of

7 Visual Arts.

8 Q. How long have you done that?

9 A. I think I'm close to 20 years.

10 Q. Are you on the faculty there?

11 A. I am.

12 Q. I don't know what kind of faculty

13 system they have, but are you on the regular

14 faculty?

15 A. I am in the continuing ed. faculty.

16 Q. Other than teaching and producing the

17 images that we have been talking about, is there

18 another aspect of your photography work?

19 A. Yes.

20 Q. What is that?

21 A. I work on television sets, taking

22 publicity shots on set, and I do corporate

23 photography. I have photographed lawyers at big

24 firms. And I do some, a tiny bit of event

25 photography, and I should add a little bit of

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1 Nitke

2 fashion. I would like to do more, but I do a

3 little bit.

4 MS. WYER: I am marking another

5 exhibit as Nitke 11.

6 (Nitke Exhibit 11 marked for

7 identification)

8 Q. Do you recognize this?

9 A. Oh, Project Runway, absolutely.

10 MS. WYER: Let the record reflect that

11 I have marked Nitke 11 and handed it to the

12 witness and the witness's counsel.

13 Q. This is a document from the website

14 IMDb.com, correct?

15 A. Oh, correct, yes.

16 Q. Do you know what this is?

17 A. I do. It is so funny.

18 Q. Are you familiar with the website

19 IMDb.com?

20 A. I am.

21 Q. Could you explain what it is?

22 A. It is a website that lists credentials

23 of people who work in film and television.

24 Q. The individuals who are working, do

25 they provide the data for those entries

Page 121

1 Nitke  
2 themselves, or does someone else compile and  
3 publish this information?  
4 A. It is my understanding that anyone can  
5 go in there and put in people's credentials. I  
6 don't know if they have some system for checking  
7 whether they're accurate or not.  
8 Q. Did you make this entry? This is an  
9 entry that lists your name, correct?  
10 A. Correct.  
11 Q. Have you seen this before?  
12 A. I have. I haven't looked at it  
13 lately, but I have seen it.  
14 Q. Did you make this entry yourself?  
15 A. Which one?  
16 Q. Did you post all of this information  
17 on IMDb.com yourself, or did someone else put  
18 this up here?  
19 A. Someone went into IMDb and put in as  
20 many of my porn credentials as they could find.  
21 Q. Oh, really?  
22 A. I did not enter them. I went in and  
23 added a bunch of my mainstream credentials. And  
24 I haven't looked at it in, I don't know, years.  
25 Q. So you can't vouch for the accuracy of

Page 122

1 Nitke  
2 every single entry on here, is that right?  
3 A. I can look at it and tell you.  
4 Q. You don't need to.  
5 A. It looks accurate. I don't know where  
6 they gather everything, but this looks accurate.  
7 I don't have any problem with it.  
8 Q. This refers to you?  
9 A. That's me.  
10 Q. Do you know if the IMDb website is  
11 used by potential employers who are looking to  
12 hire a photographer?  
13 A. I suspect that it might be, but I  
14 don't know.  
15 MS. WYER: I am marking another  
16 exhibit, Nitke 12.  
17 (Nitke 12 was marked for  
18 identification)  
19 Q. I have marked as Exhibit Nitke 12 a  
20 document titled Barbara Nitke Photography with a  
21 URL at the bottom that begins with  
22 www.barbaranitke.com.  
23 Do you recognize this document?  
24 A. I do.  
25 Q. Is this your website?

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1 Nitke  
2 A. Correct.  
3 Q. Is this a website that you maintain  
4 yourself?  
5 A. It is.  
6 Q. Do you actually manage the content of  
7 the website yourself?  
8 A. I do.  
9 Q. This page is under the biography tab  
10 or something on the website, right?  
11 A. Right.  
12 Q. And this lists your -- how would you  
13 describe it?  
14 A. It is my biography or my résumé.  
15 Q. Is it a selective résumé?  
16 A. It is a selective résumé.  
17 Q. For what purpose?  
18 A. It is aimed at the art gallery world.  
19 Q. What is your purpose in having a  
20 website?  
21 A. Making my work known.  
22 Q. Is that in the interest of selling it?  
23 A. Hopefully, someday.  
24 Q. Is it part of the kind of business of  
25 being a photographer that you are trying to

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1 Nitke  
2 disseminate your work?  
3 A. Well, this website, barbaranitke.com,  
4 is aimed at letting people know about my artwork  
5 and hopefully finding an art gallery that might  
6 want to sell it, which I don't currently have.  
7 So the purpose of it is to get the work known in  
8 the world and hopefully one day sell the work.  
9 Q. Do you have an agent?  
10 A. No.  
11 Q. You said you don't have a gallery that  
12 represents you?  
13 A. Correct.  
14 Q. For this other kind of work that you  
15 do with the -- I always lose track of what  
16 things are called -- the work on the TV shows?  
17 A. Television stills work.  
18 Q. Television stills work, how do you get  
19 those jobs?  
20 A. I maintain a separate website that's  
21 aimed at that group of people that might hire me  
22 for that, but most of the work is word of mouth.  
23 Q. What is the website that you maintain  
24 for that?  
25 A. Awesomestills.com.



March 16, 2013

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1 Nitke  
2 Q. So you don't think you can say  
3 accurately the specific age of this person?  
4 A. I just don't want to take a guess at  
5 it.  
6 Q. Do you think that you can say within a  
7 ten-year range what you think?  
8 A. My fear is that it is a trick question  
9 to be honest with you, so I just don't want to  
10 go there.  
11 Q. How could it be a trick question?  
12 A. Well, if she's 16 but she looks 30,  
13 and I say she looks 30 and she's not, that would  
14 be a bad reflection on my ability to guess  
15 people's ages, so I just don't want to take a  
16 guess. I don't know anyone that knows her. I  
17 don't know her. I have never seen her ID. I  
18 just don't want to guess at it.  
19 Q. So is this consistent with what you  
20 have said about the way you practice, that you  
21 don't rely on appearance?  
22 A. Yes.  
23 Q. So, without knowing someone and  
24 looking at their ID, you don't feel  
25 comfortable --

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1 Nitke  
2 A. I just think there's too much at stake  
3 in an issue like that. And I didn't mean  
4 anything insulting about the trick question  
5 remark. You know, I am just being candid.  
6 Q. Well, do you think that you would be  
7 any worse at determining someone's age than  
8 someone else by looking at an image?  
9 A. It depends on who the someone else is.  
10 I mean, if you are talking about a casual viewer  
11 who has nothing at stake by guessing someone's  
12 age, that's kind of a different frame of  
13 reference than me, a photographer who might have  
14 taken that picture.  
15 Q. Did you take this picture?  
16 A. No. But I'm saying, you know, if  
17 you're asking me in my role as a photographer  
18 who might possibly take a picture like this,  
19 then I just don't want to go there with  
20 guessing. If it is a viewer who is looking at  
21 it just to enjoy looking at it, one would assume  
22 that viewer is going to say, yeah, that is a  
23 mature person, you know, wow, it's cool to look  
24 at that picture. I'm not looking at a child.  
25 But that viewer doesn't have the same

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1 Nitke  
2 stake in it as I the photographer do.  
3 Q. Do you think that law enforcement has  
4 a stake in knowing the age of individuals in  
5 pictures like this?  
6 MS. BAUMGARDNER: Objection.  
7 A. I can't wrap my head around it. I am  
8 not sure I know what you mean.  
9 Q. You said that as a photographer you  
10 feel that there's too much at stake to guess  
11 someone's age in an image like this just based  
12 on looking at the image?  
13 A. Correct.  
14 Q. I assume that that's because if the  
15 individual were under 18 it would be child  
16 pornography?  
17 MS. BAUMGARDNER: Objection.  
18 Q. Is that why?  
19 A. Taking the term "child pornography"  
20 out, it would be illegal for me to photograph  
21 someone -- I guess you could call that a sexual  
22 situation, so it could be in an illegal area for  
23 me.  
24 Q. For someone like an officer of the law  
25 who is charged with enforcing those laws, do you

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1 Nitke  
2 think that they also have a stake in making sure  
3 of the ages of these individuals?  
4 A. I think where I'm having -- I am  
5 trying to figure out why I'm having difficulty  
6 with that question. I think it is because I  
7 don't understand the role of the law enforcement  
8 people that I can't figure out how to answer the  
9 question. Are there law enforcement people that  
10 look at images like this all the time to figure  
11 out if there's anyone underage or -- I just  
12 don't know how their side of it works, if that  
13 makes sense. I don't know how they go about  
14 what they go about. I would have assumed that  
15 they would have a complaint that they would  
16 follow up on.  
17 Q. So your assumption would be that they  
18 would only investigate instances of underage  
19 performers, underage individuals being depicted  
20 over an act that has happened?  
21 MS. BAUMGARDNER: Objection.  
22 A. Well, I don't know how that side of it  
23 works. I mean I just don't know.  
24 MS. WYER: I will take this back.  
25 Q. Let's go to interrogatory No. 7. That

**In The Matter Of:**  
*Free Speech Coalition Inc. v.*  
*The Honorable Eric H. Holder, Jr., Attorney General*

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*Carol A. Queen, Ph.D.*  
*April 18, 2013*

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Original File 21607Queen.txt

Min-U-Script® with Word Index

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1 MS. BAUMGARDNER: I don't know yet.  
2 MR. SCHWARTZ: Okay. Well, I'm going to try to  
3 remember to ask you. At the end I'll probably forget.  
4 MS. BAUMGARDNER: I'll try to remember.  
5 MR. SCHWARTZ: Yeah, but I'd like to just get  
6 that on the record.  
7 BY MR. SCHWARTZ:  
8 Q. But what we're talking about there, there's  
9 a -- your lawyer will decide at the end whether you have  
10 an opportunity to read and review what happened here  
11 today before it goes to final. If your lawyer decides  
12 that that's something you want to do, you'll take a look  
13 at it. If you need to make any changes to it, you can,  
14 with the help of your lawyer, to make sure everything is  
15 accurate.  
16 But just so you know, if there's any  
17 significant substantive changes to your testimony, we  
18 may need to come back and do another deposition to  
19 explore what happened with those answers and why there  
20 were the changes. Do you understand that?  
21 A. Yes, thank you.  
22 Q. Okay, that's the preamble. So now I'm just  
23 going to do a couple -- some background questions.  
24 Did you prepare for this deposition today?  
25 A. When you say "prepare," could you tell me what

1 background.  
2 A. I have a B of science in sociology, from the  
3 University of Oregon. I have a year of graduate school,  
4 also sociology, from that same institution. Then I  
5 switched from sociology to sexology and moved to San  
6 Francisco and attended the Institute for Advanced Study  
7 of Human Sexuality, a small graduate program here. And  
8 got my Ph.D. in -- I think it was 1998.  
9 Q. And was that from the Institute for Advanced  
10 Study of Human Sexuality?  
11 A. Yes.  
12 Q. Can you describe your work history.  
13 A. Some stints in restaurants back in the day. I  
14 was a graduate teaching fellow in college, and I also  
15 was the director of my campuses, LGBT student  
16 organization, for a while. I was the director of  
17 education at the Willamette AIDS Council in Eugene.  
18 When I had moved to San Francisco I worked at the Lusty  
19 Lady theater, which is a peep show, while I was going to  
20 school.  
21 And then worked at -- these two things are  
22 simultaneous. Worked at Good Vibrations, beginning in  
23 1990. My responsibilities, they're morphed into being  
24 in charge of education programming. And, also, for a  
25 couple of years was in charge of trainings at San

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Page 16

1 you mean.  
2 Q. Did you meet with anyone before this  
3 deposition?  
4 A. Lorraine and I spoke before the deposition.  
5 Q. Okay. Did you review any documents?  
6 A. No.  
7 Q. Did you meet with anyone else other than  
8 Lorraine?  
9 A. No.  
10 Q. Did you take any notes to prepare for the  
11 deposition?  
12 A. No, I didn't.  
13 Q. Did you participate in preparing the discovery  
14 responses? And by that I mean, they're called  
15 interrogatories or request for production of documents.  
16 A. The questions that were sent, yes. Yes, I did.  
17 Q. Okay. What did you do for those, those  
18 questions that were asked?  
19 A. Well, I answered them to the best of my  
20 ability.  
21 Q. Okay.  
22 A. There were some documents that were requested,  
23 and I made copies of them and sent them off so that they  
24 could be forwarded to you all.  
25 Q. Great. Can you describe your educational

1 Francisco Sex Information. That was a shorter period of  
2 time, but was over the same period of time. I am  
3 currently, in addition to the Good Vibrations job that I  
4 still hold, the founding director at the Center for Sex  
5 & Culture.  
6 Q. Can you describe what the Center for Sex &  
7 Culture is.  
8 A. Center for Sex & Culture is a small nonprofit  
9 that maintains a library and archive, as well as a  
10 gallery, having to do with sexuality-related topics. We  
11 collect notable papers from writers and activists,  
12 books, from pop culture to academic, a range of  
13 materials having to do with sexuality. And we produce  
14 and offer sex ed classes, sex-related cultural  
15 programming, and related benefits and things that  
16 help -- allow the entity to continue.  
17 Q. All right. And at Good Vibrations, currently  
18 are you still in charge of their educational program?  
19 A. My title now is staff sexologist and staff  
20 historian, as well as the curator of the Antique  
21 Vibrator Museum.  
22 Q. Can you just describe what your duties are.  
23 A. My fundamental role is overseeing educational  
24 programming for the staff and the public, as far as the  
25 entities that we do or the workshops that we do within

<div>Page 21</div> <div> <p>1 Q. That's all right.</p> <p>2 A. All right.</p> <p>3 Q. Can you describe what type of sexually explicit</p> <p>4 material that you produce.</p> <p>5 A. I have been involved in. Although, I wouldn't</p> <p>6 say I was a producing entity of sex education videos. I</p> <p>7 do erotic art, collage art, that sometimes has sexually</p> <p>8 explicit components to it, taken from other images. I'm</p> <p>9 a writer and sometimes do sexually explicit writing.</p> <p>10 I'm not sure if that counts as what you're asking me to</p> <p>11 describe, but that's part of my output.</p> <p>12 And at the Center for Sex &amp; Culture we do two</p> <p>13 things that might have a relationship to this: One is</p> <p>14 the Masturbate-a-Thon and the other is our</p> <p>15 currently-inactive photo club.</p> <p>16 Q. And you say "inactive." What does that mean?</p> <p>17 A. We're not holding meetings of the photo club at</p> <p>18 the present, but we have, and we may again in the</p> <p>19 future.</p> <p>20 Q. When was the last time you held a meeting of</p> <p>21 the photo club?</p> <p>22 A. My recollection is it was late last summer.</p> <p>23 Q. What was the purpose of the photo club?</p> <p>24 A. The photo club brings nascent interested</p> <p>25 photographers in to work with more experienced</p> </div>	<div>Page 23</div> <div> <p>1 that you make?</p> <p>2 A. What kind of material that's explicit?</p> <p>3 Q. Yes.</p> <p>4 A. Either alone or with my partner. Or in a few</p> <p>5 cases with another performer I have done sex ed</p> <p>6 associated with masturbation and vibrator use; lesbian</p> <p>7 or woman-to-woman safer sex; female ejaculation, also a</p> <p>8 masturbation-centric video; what is now called</p> <p>9 "pegging," which is a woman giving anal pleasure to a</p> <p>10 man. Those are the main -- the Sinclair movies were --</p> <p>11 I think one was a Tantra movie and one was a oral sex</p> <p>12 technique movie, if I remember that correctly.</p> <p>13 Q. Okay. And are you currently making these</p> <p>14 videos?</p> <p>15 A. At the moment, no. I can't say I've stopped</p> <p>16 permanently, but there hasn't been a project for a</p> <p>17 while.</p> <p>18 Q. When was the last time that you made a sex ed</p> <p>19 video?</p> <p>20 A. The last time I was associated in a production</p> <p>21 of a sex ed video was probably two years ago. I wasn't</p> <p>22 in front of the camera. I was a script writer and a</p> <p>23 host at that point, the talking head.</p> <p>24 Q. Is there a reason why you haven't done a video</p> <p>25 in the last two years?</p> </div>
<div>Page 22</div> <div> <p>1 photographers in a group setting where they get</p> <p>2 education classes in photography, principles, and</p> <p>3 techniques. And then they do a shoot with models.</p> <p>4 Q. And are these nude models?</p> <p>5 A. They can be nude models and may be sexually</p> <p>6 explicit in their behavior. It just depends on the</p> <p>7 model and the day.</p> <p>8 Q. Okay. Is the class -- are these classes</p> <p>9 specifically for how to take photographs of sexually</p> <p>10 explicit material?</p> <p>11 A. Of erotic material. We wouldn't call it</p> <p>12 "sexually explicit" specifically, because someone might</p> <p>13 want to take any kind of a range of photos inclusive of</p> <p>14 that, but that wouldn't be it.</p> <p>15 Q. Okay. So sexually explicit could be a subset</p> <p>16 of what they are learning?</p> <p>17 A. That sounds right, yes.</p> <p>18 Q. And why isn't the photo club meeting currently?</p> <p>19 A. We had reached a kind of stasis with the</p> <p>20 members. There was a group of people who had been with</p> <p>21 it for a long time. People were starting to not come to</p> <p>22 meetings, so we decided to let it go fallow for a while</p> <p>23 and maybe revive it later with new members.</p> <p>24 Q. What sort of material is in the -- that is</p> <p>25 sexually explicit is in the sexual educational videos</p> </div>	<div>Page 24</div> <div> <p>1 A. A project hasn't come along that appealed to</p> <p>2 me.</p> <p>3 Q. How many sex ed videos would you say you've</p> <p>4 made in the past?</p> <p>5 A. If you give me a minute to count on my fingers,</p> <p>6 I think I could.</p> <p>7 MS. BAUMGARDNER: And can we clarify? You're</p> <p>8 meaning produced and made in the generic sense rather</p> <p>9 than the statutory, I'm assuming?</p> <p>10 MR. SCHWARTZ: Right.</p> <p>11 THE WITNESS: Those that I have been involved</p> <p>12 with; is that really the clarification?</p> <p>13 BY MR. SCHWARTZ:</p> <p>14 Q. Yes.</p> <p>15 A. About 13, if I haven't forgotten one.</p> <p>16 Q. That's okay. And what time frame are we</p> <p>17 talking about, if you know, that these videos were</p> <p>18 produced over?</p> <p>19 A. I can give you a pretty good range. 1988, I</p> <p>20 think, was the first one, to, say, 2011.</p> <p>21 Q. And for those videos that you were involved</p> <p>22 with that had sexually explicit material in it prior to</p> <p>23 2257, did you make any effort to get age verification</p> <p>24 from the people who are performing?</p> <p>25 A. I wasn't involved in the production of anything</p> </div>

<div>Page 25</div> <div> <p>1 before that time. I do remember giving my ID in those</p> <p>2 contexts. So there was age verification conducted. I</p> <p>3 just wasn't in charge of conducting it.</p> <p>4 <b>Q. What about after the enactment of 2257 and the</b></p> <p>5 <b>videos, were you involved in the collection of IDs for</b></p> <p>6 <b>that?</b></p> <p>7 A. Always, yes.</p> <p>8 <b>Q. What was that process?</b></p> <p>9 A. That process involved -- I was not the -- sort</p> <p>10 of the originating entity of collection then either.</p> <p>11 That involved showing ID, having ID recorded in some</p> <p>12 manner, photocopied or -- signing a release that</p> <p>13 included name, any other names performed under or aka's,</p> <p>14 pseudonyms, address, date of birth. And I believe that</p> <p>15 in each case there was the -- pursuant to U.S. 2257 as</p> <p>16 part of the language of that release. That's my</p> <p>17 recollection.</p> <p>18 <b>Q. Okay. The erotic art that you talked about</b></p> <p>19 <b>that you've done in the past. Can you describe what</b></p> <p>20 <b>that is.</b></p> <p>21 A. Sure. I'm a collage artist, paper, scissors,</p> <p>22 and glue. I take images usually that are from explicit</p> <p>23 art but sometimes also from books of fine art, found</p> <p>24 paper, anything that has an image on it that seems as</p> <p>25 though it might work as it collides. It's a little</p> </div>	<div>Page 27</div> <div> <p>1 the art, because I don't always know the date of the</p> <p>2 materials that I am pulling from. It seems clear that</p> <p>3 when I have a photo of a naked person or sexually</p> <p>4 explicitly conduct that I want to utilize in a piece of</p> <p>5 art, that I can't get that 2257. If I were to put the</p> <p>6 art out in the world in a published form -- I've done</p> <p>7 gallery shows, but I've not published. And I'm hesitant</p> <p>8 to publish because I don't have any idea how I would</p> <p>9 come at this question of how to -- I don't know if that</p> <p>10 makes me a secondary producer.</p> <p>11 The language of 2257 is a little daunting, but</p> <p>12 also a little unclear to me in this particular context.</p> <p>13 I haven't ever sought any legal opinion about it,</p> <p>14 really, but it's one of the things I think that's</p> <p>15 probably slowed me down from attempting to publish them.</p> <p>16 <b>Q. But not necessarily the creation of it?</b></p> <p>17 A. No. I wouldn't not say that I have not created</p> <p>18 a piece when I was moved to create one for this reason.</p> <p>19 But certainly what I do then with the finished piece of</p> <p>20 paper, once the glue dries, this is somewhat relevant</p> <p>21 too.</p> <p>22 <b>Q. If you wanted to put sort of the art in a book</b></p> <p>23 <b>or --</b></p> <p>24 A. Yes.</p> <p>25 <b>Q. Has it ever prevented you from having a gallery</b></p> </div>
<div>Page 26</div> <div> <p>1 difficult to explain collage in terms of that part.</p> <p>2 I do maybe a few a year. I don't do a lot of</p> <p>3 them, but I have displayed and shown them more than</p> <p>4 once. And I will cut or tear images and assemble them</p> <p>5 in a way that speaks to me, and I hope will speak to</p> <p>6 viewers, to either highlight something about the</p> <p>7 eroticism of the situation that I've compiled or</p> <p>8 something else, some aesthetic communication or some</p> <p>9 cultural or social communication.</p> <p>10 <b>Q. When is the last time you put together a piece</b></p> <p>11 <b>of erotic art?</b></p> <p>12 A. I don't think -- I think the last collage I</p> <p>13 constructed actually didn't have erotic elements</p> <p>14 specifically. It was a gift for someone. That was late</p> <p>15 last year. So I'm going to say it's been about a year</p> <p>16 and a half, roughly, since I've done any new collage</p> <p>17 work.</p> <p>18 <b>Q. And is there a reason why you haven't made any</b></p> <p>19 <b>art?</b></p> <p>20 A. It's mainly associated with time frame, and it</p> <p>21 takes a certain kind of inspiration to do visual art</p> <p>22 like that, for me. And if I'm too busy I don't do it.</p> <p>23 <b>Q. The requirements of 2257 are not preventing you</b></p> <p>24 <b>from creating erotic art?</b></p> <p>25 A. Well, they're problematic in the creation of</p> </div>	<div>Page 28</div> <div> <p>1 <b>showing, the requirements of 2257?</b></p> <p>2 A. I don't think so. Although, to be frank, I</p> <p>3 don't know if a gallery showing is a form of</p> <p>4 publication, so it does give me some concern.</p> <p>5 <b>Q. And the other thing you mentioned was the</b></p> <p>6 <b>Masturbate-a-Thon.</b></p> <p>7 A. Right.</p> <p>8 <b>Q. Is that -- would you consider that your primary</b></p> <p>9 <b>involvement with sexually explicit material?</b></p> <p>10 A. I think it's one of my two primary</p> <p>11 involvements. The other one being my involvement in the</p> <p>12 sex ed videos. But the Masturbate-a-Thon, I think it's</p> <p>13 fair to say, is the other most intensive involvement.</p> <p>14 <b>Q. Okay. Can you describe the Masturbate-a-Thon</b></p> <p>15 <b>for me.</b></p> <p>16 A. Sure. The Masturbate-a-Thon -- and I want to</p> <p>17 state here that it's the live Masturbate-a-Thon as</p> <p>18 opposed to any other Masturbate-a-Thon, because the</p> <p>19 original Masturbate-a-Thon wasn't a group event. It</p> <p>20 wasn't an event that would have been recorded or webcast</p> <p>21 or anything or even held in a group. It was a private</p> <p>22 event.</p> <p>23 Which I can clarify for you, if you need me to.</p> <p>24 The live Masturbate-a-Thon is an event at which people</p> <p>25 are supposed to get pledges from others. They can also</p> </div>



<div>Page 29</div> <div> <p>1 pledge themselves if they don't have appropriate others</p> <p>2 to ask for pledges. It's a charity fund-raising</p> <p>3 event -- comparable to a walkathon, only involving</p> <p>4 masturbation, and you don't have to get a permit to walk</p> <p>5 in a park to do it -- that brings a range of people</p> <p>6 together into one space, usually -- we've done these as</p> <p>7 benefits for the Center for Sex &amp; Culture. Usually the</p> <p>8 space is at the Center for Sex &amp; Culture, but we're not</p> <p>9 always at the same location. Our current location is</p> <p>10 too small to allow for the kind of Masturbate-a-Thon I'm</p> <p>11 about to describe for you, so we've scaled back a little</p> <p>12 bit.</p> <p>13 I'm going to describe the place that we mostly</p> <p>14 used. It had three relatively large rooms. One room</p> <p>15 would be the room where people who wanted to be involved</p> <p>16 in a live webcast could go. They would have to sign</p> <p>17 paperwork, give us copies of their ID. We carded</p> <p>18 everyone who entered the building, but those people</p> <p>19 would have to give us their real name and their aka's,</p> <p>20 fill out paperwork, allow us to copy their ID, and then</p> <p>21 they would get a band that would allow them to go into</p> <p>22 the room where there would be people at the door to</p> <p>23 prevent other people from going into the room.</p> <p>24 And there would be a room that was set up as a</p> <p>25 private room where people would not have to worry about</p> </div>	<div>Page 31</div> <div> <p>1 that from the -- either from the public room or from the</p> <p>2 main rooms, see how people were doing, talk about what</p> <p>3 it takes to masturbate for a long time. Not everyone</p> <p>4 can do it, et cetera.</p> <p>5 Does that give you the information you need?</p> <p>6 <b>Q. Yes, it does.</b></p> <p>7 A. All right.</p> <p>8 <b>Q. This is probably a fairly obvious point, but I</b></p> <p>9 <b>just want to get it on the record. Is there any sexual</b></p> <p>10 <b>intercourse at the Masturbate-a-Thon?</b></p> <p>11 A. It is expressly forbidden. Sexual intercourse</p> <p>12 is expressly forbidden. Partner sex is not</p> <p>13 masturbation. If a partner wants to be with their</p> <p>14 masturbating partner, they can be with them, in contact</p> <p>15 with them, but no sexual intercourse.</p> <p>16 <b>Q. Okay. So what -- just to clarify, what you</b></p> <p>17 <b>would show on a webcast would be basically images of</b></p> <p>18 <b>masturbation and depictions of genitalia?</b></p> <p>19 A. Right, and discussions thereof.</p> <p>20 <b>Q. Okay. And can you describe to me how it works</b></p> <p>21 <b>that the -- I'm going to call it "streaming." Is that</b></p> <p>22 <b>how --</b></p> <p>23 A. I think that's the right term. I'm not a</p> <p>24 techie, but I think that's --</p> <p>25 <b>Q. Me neither, but if we could just agree on that</b></p> </div>
<div>Page 30</div> <div> <p>1 a camera entering on any level, and we would have guards</p> <p>2 there at the door as well. And then there would be a</p> <p>3 room -- the refreshment table -- the place where I would</p> <p>4 give interviews and interview other people while the</p> <p>5 Masturbate-a-Thon was going on. Because the point of</p> <p>6 the whole thing, as a live event webcast, is to talk</p> <p>7 about masturbation and communicate ideas and information</p> <p>8 about masturbation from the perspective of both the</p> <p>9 people who are there, but also the -- the sexology of</p> <p>10 it.</p> <p>11 So people would enter. They would stay at</p> <p>12 the -- stay in line for the desk, the registration desk,</p> <p>13 until we had everyone carded. The people who wanted to</p> <p>14 be in the public room would go over to the side to talk</p> <p>15 to the people who are doing that, taking their IDs, and</p> <p>16 then everyone would mingle until they went into their</p> <p>17 general rooms. People didn't have to masturbate, but</p> <p>18 they could. There was a space set aside for women only,</p> <p>19 if women didn't want to be in a group. Also one for men</p> <p>20 only, if men didn't want to be in the group.</p> <p>21 And the other thing that was salient to all of</p> <p>22 these Masturbate-a-Thons is that we gave awards for the</p> <p>23 person who masturbated the longest time. So people</p> <p>24 would come in and set themselves up with timekeepers and</p> <p>25 do that whole competitive thing. And I would talk about</p> </div>	<div>Page 32</div> <div> <p>1 <b>term, we'll call it "streaming," the method by which you</b></p> <p>2 <b>put it on the internet.</b></p> <p>3 A. Right.</p> <p>4 <b>Q. Can you describe that process.</b></p> <p>5 A. I can describe only a little, because there's a</p> <p>6 technology involved that I don't fully understand. My</p> <p>7 understanding is that our crew would come in and connect</p> <p>8 some kind of device -- that I'm not even sure of the</p> <p>9 name of -- that allowed for enough bandwidth to go out</p> <p>10 and actually do a successful stream. The first time we</p> <p>11 tried it we didn't have such a bandwidth ability, and we</p> <p>12 don't think we actually did stream. We don't even know.</p> <p>13 We got people in who knew how to do it, and so</p> <p>14 they would really be in charge of the entire technical</p> <p>15 piece of how they would -- how they wanted the room so</p> <p>16 that they would have camera ability, that they wouldn't</p> <p>17 disturb people but they could go into the people who did</p> <p>18 wish to be depicted and get them appropriately, get them</p> <p>19 on the stream. And I believe the camera is attached to</p> <p>20 this device with long, long cords. That's what I</p> <p>21 remember.</p> <p>22 And there was an element involved with our</p> <p>23 webmaster installing a button so that people could go</p> <p>24 and access the stream, I think.</p> <p>25 <b>Q. Okay. When is the -- what year was the first</b></p> </div>

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1 time you successfully did stream it to the internet?

2 A. I think the answer to that -- I think the

3 answer to that is 2005.

4 Q. Have you at least attempted to stream it every

5 Masturbate-a-Thon since then?

6 A. With the exception of the last two years, when

7 we have moved into a venue that's too small to allow the

8 kind of moving around and grouping of people that I just

9 described to you, I think the answer is yes.

10 Q. Okay. So just to clarify, you have not

11 streamed to the internet the Masturbate-a-Thons for the

12 last two years?

13 A. That's correct.

14 Q. For the ones that did get streamed to the

15 internet, how many people would you say were in the room

16 where the streaming occurred? And by that I mean -- I

17 don't care about the techies, but the people who were

18 masturbating.

19 A. The people who were willing to be depicted?

20 Q. Yes.

21 A. Because they didn't all masturbate,

22 necessarily. It depended upon how they felt, I suppose.

23 I'm going to say that the high end of that number was

24 about 70 at our largest event, and was more like 30,

25 maybe, at the smallest.

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1 Q. And I presumed just by how this works, that

2 people would come in and out?

3 A. Yes.

4 Q. So that 70 represents not at any one particular

5 time but over the course of the event?

6 A. Right. That's right.

7 Q. How would someone access the live stream who

8 wasn't there? How would they access it over the

9 internet?

10 A. Generally, what they would do -- and, again,

11 this is me not being the tech person in my entity -- is

12 they would go to the website, and there was a -- I

13 believe there was a requirement of a credit card

14 donation that would allow them to access the stream.

15 That was one more piece of both fund raising and also

16 protection around the stream.

17 And my understanding is that we were not -- we

18 were not the big cheeses as far as this was concerned.

19 It didn't always succeed. It wasn't always a

20 successfully sent stream. I know I was the one who had

21 to send apology letters if somebody's stream got

22 interrupted. So it really was a one-time a year. We

23 would start it from scratch each time we did it. So I

24 don't know if we changed the technology, even. I have

25 to tell you I don't know that part.

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1 Q. Okay. What was the donation that people had to

2 make to access?

3 A. I think it was minimum of \$5, if I remember

4 rightly.

5 Q. How would people know that it was out there,

6 that this was being put on the internet?

7 A. We would announce it to our mailing list and

8 the people associated with us, and we would talk about

9 it, starting a couple of months in advance. The

10 original Masturbate-a-Thon, the not live one that I

11 didn't describe, during that period of time always had a

12 PR presence that we could piggyback on and say that we

13 too were doing a Masturbate-a-Thon, only a different

14 kind, as will the other Masturbate-a-Thons around the

15 world.

16 There's at least two others that I know of.

17 One does not meet the criterion that I just described to

18 you. It's more of a club event with a masturbation

19 theme. I'm not even sure what to say about that. I'm

20 not associated with it directly, so I'm not really sure.

21 And the other one is in Copenhagen. There was one in

22 the UK one time too that I was a participant in.

23 So there will be a press release sent by the

24 original Masturbate-a-Thon. We'll send a press release,

25 and they'll be some press. It's actually more

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1 interesting to international press than to U.S. press,

2 which is fascinating. And so I'll do -- I will do

3 telephone interviews with people from around the world

4 and a few people in the U.S. to try to get pre-attention

5 made, and we'll mention that there's a streaming part,

6 if we've got -- if we think we've got that as part of

7 the Masturbate-a-Thon.

8 And then it appears to me that there is -- that

9 there has been just general word of mouth or word of --

10 I don't know -- word of Facebook, word of internet

11 chatter, because people will e-mail us to ask us about

12 the Masturbate-a-Thon and when it is, who are not on our

13 list and whom we have not heard of before.

14 So people, we'll hear back, will want to

15 attend. People come from out of town to attend it

16 sometimes.

17 So that's the -- that's what I know about that.

18 Q. All right. Did you ever receive any reports or

19 anything that would enable you to know how many people

20 were viewing the live stream?

21 A. Yes, I think so. A couple of times at least,

22 and it was not an enormous number. I do not remember

23 for certain, but it would surprise me if it were more

24 than 150 people who had actually accessed it. But

25 that's not something that I can say with 100 percent

<div>Page 37</div> <div> <p>1 recollection.</p> <p>2 <b>Q. And, just to be clear, can you describe what</b></p> <p>3 <b>appeared on the live stream video.</b></p> <p>4 A. I think I can.</p> <p>5 <b>Q. Okay.</b></p> <p>6 A. To my knowledge, what somebody would get would</p> <p>7 be one of two things: Either an image, like a YouTube</p> <p>8 image, I suppose, except without all of the surroundings</p> <p>9 of either the room, the large room, with the people</p> <p>10 within it, who consented to go in there masturbating, so</p> <p>11 that you could see a group of people, or more close-up</p> <p>12 focus on individual people.</p> <p>13 There would be, in many cases, a particular</p> <p>14 space where people could go and sit if they wanted to be</p> <p>15 featured. So sometimes people would do that, or that</p> <p>16 the crew would go around and find one or another person</p> <p>17 who looked like they were informing the world about</p> <p>18 masturbation in an enthusiastic way. So there would be</p> <p>19 that part.</p> <p>20 And/or -- and when I say "and" -- I think they</p> <p>21 could do split screen. So sometimes I would pop up on</p> <p>22 the side or whoever I was interviewing, just talking</p> <p>23 about masturbation while you could see masturbation</p> <p>24 happening. Or there would be me doing that or sort of a</p> <p>25 person on the street. Only they weren't on the street;</p> </div>	<div>Page 39</div> <div> <p>1 my sense, from having been there on the ground, that</p> <p>2 there was more talk show than explicit most years. But</p> <p>3 I couldn't say that conclusively because, rather than</p> <p>4 viewing the stream, I was participating.</p> <p>5 <b>Q. Does -- the live streams, are they ever</b></p> <p>6 <b>replayed, sort of like you might see a repeat episode on</b></p> <p>7 <b>television? Did you ever replay like the, let's throw</b></p> <p>8 <b>out, 2008 Masturbate-a-Thon? Did you ever replay them</b></p> <p>9 <b>on the internet?</b></p> <p>10 A. We never replay anything, no. Because</p> <p>11 there's -- no. I don't know about the UK TV show. I</p> <p>12 don't know about that. Maybe, but I don't know.</p> <p>13 <b>Q. And what do you mean? What is the UK TV show?</b></p> <p>14 A. Well, there was a TV show made in the UK about</p> <p>15 the Masturbate-a-Thon that we participated in, but</p> <p>16 we weren't the -- I mean, we were the subjects of it,</p> <p>17 really, not the producers or anything like that. And I</p> <p>18 don't know -- I'm almost positive that has never aired</p> <p>19 here. I'm not even sure it aired there.</p> <p>20 <b>Q. But as far as you and the people who actually</b></p> <p>21 <b>put it on and the center, you never -- it's a one-time</b></p> <p>22 <b>deal? Each Masturbate-a-Thon is a one-time deal for</b></p> <p>23 <b>when it appears on the internet?</b></p> <p>24 A. That's correct. It's meant to be special in</p> <p>25 that way. It's really meant to be effervescent. It's</p> </div>
<div>Page 38</div> <div> <p>1 they were there in the building. People saying, "How do</p> <p>2 you like the Masturbate-a-Thon? What do you want to let</p> <p>3 people know about masturbating; when did you start</p> <p>4 masturbating," any question that would be germane to</p> <p>5 that.</p> <p>6 And when we had featured celebrities there --</p> <p>7 which we didn't always, but sometimes we did -- we tried</p> <p>8 to have somebody there who, you know, as I told you, was</p> <p>9 one of our guests at one point.</p> <p>10 <b>Q. And just to clarify, Nina Hartley?</b></p> <p>11 A. Nina Hartley, yes.</p> <p>12 <b>Q. Okay.</b></p> <p>13 A. Then they would come and do sometimes a lot of</p> <p>14 interviewing with me, sometimes a half an hour or</p> <p>15 40-minute interview, depending on the time frame of the</p> <p>16 day, the number of people who were there, whether people</p> <p>17 had sort of cleared out of the public room by now but we</p> <p>18 were still waiting to see if somebody was going to break</p> <p>19 the record. And so I would do additional content that</p> <p>20 was basically a talk show about masturbation.</p> <p>21 <b>Q. Is there any way you can estimate a percentage</b></p> <p>22 <b>of what was of the sexually explicit material, the</b></p> <p>23 <b>masturbation, versus what was, as you say, sort of talk</b></p> <p>24 <b>show?</b></p> <p>25 A. I'm afraid that I can't estimate that. It is</p> </div>	<div>Page 40</div> <div> <p>1 not to capture these people's likenesses permanently,</p> <p>2 because they're mostly not performers. They're mostly</p> <p>3 individuals who want to come do it.</p> <p>4 <b>Q. So there's no -- is it in any way recorded</b></p> <p>5 <b>permanently?</b></p> <p>6 A. There's photo documentation some years in that</p> <p>7 room, but, to my knowledge, no. To my knowledge, it's</p> <p>8 not retained.</p> <p>9 <b>Q. The video?</b></p> <p>10 A. Yes.</p> <p>11 <b>Q. And when you say "the photos," that's someone</b></p> <p>12 <b>with a camera who comes in and takes pictures?</b></p> <p>13 A. That's correct.</p> <p>14 <b>Q. Versus -- I think it's possible you could take</b></p> <p>15 <b>stills from a video, but that's not what you're talking</b></p> <p>16 <b>about?</b></p> <p>17 A. Right. That's not what I'm talking about.</p> <p>18 <b>Q. Okay. Do you keep copies of any of the photos</b></p> <p>19 <b>of sexually explicit material that might be taken at a</b></p> <p>20 <b>Masturbate-a-Thon?</b></p> <p>21 A. I don't think we have any copies of any of this</p> <p>22 material at the center. I think the arrangement that we</p> <p>23 made was that the photographer would handle all of</p> <p>24 the -- making those photos available to press, if that</p> <p>25 were desired in the future. That's my understanding of</p> </div>

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1 the arrangement that we had with him.  
 2 **Q. And who is that photographer?**  
 3 A. David Steinberg.  
 4 **Q. Okay. So you don't post pictures on your own**  
 5 **website from the Masturbate-a-Thons?**  
 6 A. We don't have any of those kinds of pictures on  
 7 the Center for Sex & Culture's website, and I don't  
 8 think we ever -- I don't think we ever posted anything  
 9 on the Masturbate-a-Thon's own site that were from the  
 10 Masturbate-a-Thon. I don't think so.  
 11 **Q. Do you know of any other producers of sexually**  
 12 **explicit material who concentrate on masturbation and**  
 13 **the candid display of genitals?**  
 14 A. There are certainly -- there are certainly  
 15 plenty of masturbation-focused videos and sites. Some,  
 16 I think, are subsites of other larger ones, if I  
 17 understand correctly. I know that there have been  
 18 specific -- as I told you, there have been a couple of  
 19 specific masturbation-related things that I've been  
 20 involved in, but they weren't all that those producers  
 21 wanted to do.  
 22 The main entities I know of right now are the  
 23 people in Australia who do -- oh, what's their name?  
 24 It's got "Exquisite" in the title, I think. Anyway,  
 25 it's a focus -- I don't even know if they have genital

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1 depiction. It may only be faces. It may only be  
 2 orgasmic faces.  
 3 There was a couple here in the Bay Area who  
 4 were doing something called "Red Handed Productions"  
 5 that cosponsored the Masturbate-a-Thon one year to  
 6 promote their little masturbation videos. And I know  
 7 there must be zillions more, but I couldn't tell you  
 8 specific names of companies.  
 9 **Q. Do you know what the age range of people that**  
 10 **participate in the Masturbate-a-Thons?**  
 11 A. Well, it goes up to the 60s or even 70 years  
 12 old. I'm trying to remember the age of the youngest  
 13 person that I can remember seeing an ID for. I feel  
 14 like it's 19 or 20. People in their early 20s are rare  
 15 there. That's not the kind of thing that most young  
 16 people are interested in at all. It's mostly people in  
 17 their 30s and 40s who attend.  
 18 **Q. But if someone came who had an ID, an**  
 19 **appropriate ID who was 18 or 19, you would not prevent**  
 20 **them from participating; is that accurate?**  
 21 A. If they had an appropriate ID, no.  
 22 **Q. No, meaning you would not --**  
 23 A. No, no. I'm sorry, yes, I would not prevent  
 24 them from participating if they had an appropriate ID.  
 25 **Q. Okay. How many of the 19- or 20-year-olds do**

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1 **you recall participating over the course of the**  
 2 **Masturbate-a-Thons that you've held?**  
 3 A. Three or four.  
 4 **Q. And that's since you started doing the --**  
 5 A. Yes, that's right.  
 6 **Q. What was the year? What was the year that you**  
 7 **did the first one?**  
 8 A. The very first one that we didn't have a  
 9 successful attempt at a web -- the attempted webcast was  
 10 not successful. If my memory serves me, that was in  
 11 2001. It was in the spring of 2001.  
 12 **Q. And have you held it every year since then?**  
 13 A. There were a couple of years when we did not  
 14 have a venue, so no. Most years since then, yes. I  
 15 don't know that we had a venue that next year. I know  
 16 we had our own venue in 2005 and at least one time we  
 17 rented a different venue. It might have been twice, but  
 18 it was at least once. So in the early 2000s it was not  
 19 as consistent as it became once we had our venue.  
 20 **Q. And when was the most recent Masturbate-a-Thon?**  
 21 A. The most recent Masturbate-a-Thon was last May.  
 22 **Q. May 2012?**  
 23 A. May 2012, that's right. But it was not  
 24 streamed.  
 25 **Q. If I'm correct, the last one that was streamed**

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1 **was in 2010?**  
 2 A. I believe that's right.  
 3 **Q. Is another Masturbate-a-Thon planned?**  
 4 A. Yes.  
 5 **Q. And when is that going to happen?**  
 6 A. We are going to have another Masturbate-a-Thon  
 7 or similar event, because we're not sure that we want to  
 8 continue the duration part. And the duration part is  
 9 part of what makes it a Masturbate-a-Thon. So we might  
 10 call it something else, but the gist will be the same.  
 11 The last Saturday in May is when we have that scheduled.  
 12 **Q. This year?**  
 13 A. Yes.  
 14 **Q. Are there plans in place to live stream that?**  
 15 A. No. No, it will not be live-streamed.  
 16 **Q. Okay. So just to be clear, what impact is 2257**  
 17 **having, if any, on your Masturbate-a-Thons and your**  
 18 **ability to put them on?**  
 19 A. The fact that 2257 is a somewhat -- involves a  
 20 somewhat complex set of instructions about how to take  
 21 IDs, maintain those materials, and make them accessible  
 22 is, frankly, really worrisome to us. We believe we did  
 23 what we needed to do to make sure that we were in  
 24 compliance, but we hope that's the case. So there's a  
 25 little fear associated with that.



<div>Page 45</div> <div> <p>1 We are a small all-volunteer nonprofit that</p> <p>2 doesn't have regular office hours. So the part about</p> <p>3 someone wanting to come in and actually see the</p> <p>4 materials -- some appropriate entity coming to see the</p> <p>5 materials, because inappropriate people don't get to see</p> <p>6 them. They're on lockdown. We don't even allow our</p> <p>7 interns to go through them. I'm essentially the person</p> <p>8 who has to handle the material. This means that if</p> <p>9 we're not there in the middle of the day, and we often</p> <p>10 are not because our events are generally in the evening,</p> <p>11 the place will be locked up and there would be no one to</p> <p>12 give the FBI access, if the FBI is the entity that would</p> <p>13 do that inspection. Whoever appropriate would do that</p> <p>14 inspection, I guess, is what I mean.</p> <p>15 These are not the only reasons that we are not</p> <p>16 streaming the Masturbate-a-Thon now. It also has to do</p> <p>17 with the venue and the way that it's set up. But it's</p> <p>18 true in part that our concern about the 2257s and that</p> <p>19 whole part of what we need to do to comply affects our</p> <p>20 decision. It's not irrelevant. It's not the only</p> <p>21 thing, but it's not irrelevant either.</p> <p>22 The other piece that I probably ought to say</p> <p>23 about this -- I think I adequately described that some</p> <p>24 people say, "Yeah, I want to be in that room. I want to</p> <p>25 show the world." And other people want to go into the</p> </div>	<div>Page 47</div> <div> <p>1 think that there are people for whom something that</p> <p>2 otherwise would be an adult sexuality community event of</p> <p>3 interest is made frightening on some level by this</p> <p>4 requirement. And I'll never know how many people just</p> <p>5 don't come into the door at all. I'll never know that.</p> <p>6 <b>Q. But 2257 has not ever prevented you in and of</b></p> <p>7 <b>itself from hosting a Masturbate-a-Thon?</b></p> <p>8 A. No. During the periods that we were doing this</p> <p>9 streaming -- obviously, when we weren't doing streaming</p> <p>10 it's not really a relevant question. But when we were</p> <p>11 doing the streaming, no, it has never prevented us. It</p> <p>12 probably has been part of the reason that we decided</p> <p>13 only to stream and not to do anything further. That I</p> <p>14 think goes without saying. Actually, I think if we</p> <p>15 didn't have to have the concern about this set of</p> <p>16 issues, that we would have retained more materials for</p> <p>17 our archives and so forth, instead of it be an</p> <p>18 effervescent thing.</p> <p>19 We do collect a certain amount of the material</p> <p>20 that the press puts together and talks about. You know,</p> <p>21 we try to keep clippings and things like that. I have</p> <p>22 to tell the press about 2257 at every single event.</p> <p>23 They don't understand. They don't know it's there.</p> <p>24 They've never heard of it. They don't know what its</p> <p>25 requirements are. If they have heard of it, they don't</p> </div>
<div>Page 46</div> <div> <p>1 private room where there isn't going to be any risk of</p> <p>2 them being recorded. And sometimes people will say that</p> <p>3 they would do the live stream if they didn't have to</p> <p>4 leave their ID, if they didn't have to give their name</p> <p>5 and their home address, if they didn't have to step</p> <p>6 across a line having to do with their own privacy that</p> <p>7 they consider too problematic. Whether they don't trust</p> <p>8 us to maintain their materials, I don't know. Whether</p> <p>9 it's something larger, I don't necessarily know, because</p> <p>10 I'm too busy in front of a camera at the</p> <p>11 Masturbate-a-Thon to engage people a lot about this.</p> <p>12 But they do say, sometimes, that if they could just sign</p> <p>13 with the name, sort of their -- the name they use within</p> <p>14 the sex community, that they would do it. But because</p> <p>15 they have to give all of their real information, that</p> <p>16 they're hesitant and unwilling.</p> <p>17 So how many of the people who actually do leave</p> <p>18 their material and go in and participate also feel that,</p> <p>19 I don't know. But, you know, I had signed these</p> <p>20 releases, and it is not -- not of no concern to me that</p> <p>21 I have now signed my name on a dotted line in this</p> <p>22 context.</p> <p>23 So I think there's the phrase "the chilling</p> <p>24 effect," right? I think there's a chilling effect. I</p> <p>25 can't tell you how vast it is, but I can tell you that I</p> </div>	<div>Page 48</div> <div> <p>1 think it applies to the press. It's kind of</p> <p>2 extraordinary.</p> <p>3 <b>Q. Well, speaking of the press, I have some --</b></p> <p>4 <b>we'll go into that.</b></p> <p>5 <b>I think it's what you -- the 11th</b></p> <p>6 <b>Masturbate-a-Thon, I think, was in 2010. Are you aware</b></p> <p>7 <b>that there was a photographer named Gretchen Robinette</b></p> <p>8 <b>at that event?</b></p> <p>9 A. We knew that there was a photographer from the</p> <p>10 San Francisco Weekly. Is that the person that you're</p> <p>11 talking about?</p> <p>12 <b>Q. Yes.</b></p> <p>13 A. Okay.</p> <p>14 <b>Q. Are you familiar with the San Francisco Weekly?</b></p> <p>15 A. I'm familiar with the San Francisco Weekly.</p> <p>16 <b>Q. Can you tell me what that is.</b></p> <p>17 A. It's a free weekly newspaper that has been</p> <p>18 published in the Bay Area for at least 25 years, I</p> <p>19 think. It used to be locally owned. I don't think it</p> <p>20 is any longer. They've got a website and they've got a</p> <p>21 paper now.</p> <p>22 <b>Q. Are you aware that pictures of past</b></p> <p>23 <b>Masturbate-a-Thons are on their website?</b></p> <p>24 A. I was told that the person had acquired images.</p> <p>25 I explained -- I remember when they walked in, and I</p> </div>



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1 about that were discussed. I don't know that I can  
2 recall an instance where a prosecution was actually  
3 taking place. So I guess the answer to the question is,  
4 no, I don't think I can cite an instance that I know of.

5 **Q. And then, just to be clear, it's not -- the**  
6 **question wasn't about actual prosecution, but anyone who**  
7 **has been threatened with prosecution.**

8 A. I'm just having a little trouble parsing the  
9 word "threatened" right now. That's why I'm being  
10 silent a little bit. I think I know that people feel  
11 under threat of potential prosecution, but I don't think  
12 that's what you mean. Am I right?

13 **Q. No, I mean -- yes. Do you know of anyone where**  
14 **the government or the FBI has come to an individual and**  
15 **said, "We're considering prosecuting you under 2257"?**

16 A. I understand. I don't know of a specific  
17 situation like that.

18 **Q. Okay. And what you refer to as "people are**  
19 **aware," that's a possibility?**

20 A. That's correct.

21 **Q. But no one has ever officially told them that**  
22 **they -- you don't know of any instances where an**  
23 **official from the government has said, "We're thinking**  
24 **about prosecuting"?**

25 A. That's right. I don't know of any instances of

1 A. While we haven't discussed it among ourselves  
2 as to whether we would or would not, my feeling right  
3 now in answering your question is that we wouldn't  
4 because we're conscious of this question of privacy.  
5 And we know that many people have that concern who come  
6 to us. So if we weren't required to do this, I think we  
7 probably wouldn't keep the records. We would still  
8 check the ID; that would not change.

9 **Q. But without 2257 you may not necessarily take a**  
10 **Xeroxed copy of it?**

11 A. That's correct. In a situation like the photo  
12 club, where a record may still be kept of the person  
13 modeled, we would keep their release. We would still  
14 want a model release, but I don't think that we would  
15 photocopy ID and keep them with the model release.

16 **Q. And in the absence of 2257, what instances in**  
17 **what you do -- any aspect of what you do or the center,**  
18 **would you do a model release?**

19 A. In the absence of 2257?

20 **Q. Yes.**

21 A. The model release that we would keep would be  
22 associated with -- I believe only the photo club. I  
23 think that's the only time when we know there may be a  
24 record of the image that the person participated in  
25 creating.

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1 that kind.

2 **Q. Do you know of anyone who has actually been**  
3 **prosecuted under 2257?**

4 A. Not to my recollection.

5 **Q. And I think we wanted to -- I think you covered**  
6 **this a little bit, but I want to explore it and make**  
7 **sure you have a complete answer on it.**

8 **If you were not subject to the age verification**  
9 **requirements and recordkeeping requirements of 2257,**  
10 **would you still check IDs of the people who are**  
11 **appearing in streaming video at your Masturbate-a-Thons?**

12 A. Absolutely. The Center for Sex & Culture is an  
13 18-and-over venue, because of the materials we keep  
14 there. And if there's any chance that we're going to  
15 have any nudity, explicit conduct, we check IDs.

16 **Q. And why would you do that?**

17 A. Because it would not be appropriate to have  
18 people under 18 be in a space with nudity and explicit  
19 conduct. It's not legal in the first place, and it's  
20 not something we do. We're an adult education entity.  
21 There's a kind of education for young people that's  
22 quite appropriate, but that's not it.

23 **Q. Okay. If you weren't subject to the**  
24 **recordkeeping requirements of 2257, would you still keep**  
25 **a copy of those, the IDs that you would have collected?**

1 **Q. You know, you probably wouldn't do it -- you**  
2 **would probably not get a record, a model release from**  
3 **someone who wanted to appear on the live stream; is that**  
4 **accurate?**

5 A. We would still get a release from them, saying  
6 that they knew that they were going to go into a  
7 sexually-related environment. We would still check  
8 their ID. I don't know that we would maintain a copy of  
9 the release. But this is a little bit projective,  
10 because at the present we're not doing streaming, and in  
11 the future -- I don't know if we're going to stream the  
12 Masturbate-a-Thon again. It's perfectly possible we  
13 would stream something else, classes, things like that.  
14 And I think we would cross that bridge when we came to  
15 it and determine what we needed to do in order to  
16 protect the people participating but also to protect  
17 ourselves and comply with whatever compliance needed to  
18 be done.

19 **Q. But, as we sit here today, if 2257 ceased to**  
20 **exist tomorrow and you did decide to do a live stream of**  
21 **a Masturbate-a-Thon, for those people who wished to**  
22 **appear on the live stream, you would still get a model**  
23 **release from those people; is that right?**

24 A. That's right.

25 **Q. Okay. And you're uncertain as we sit here**

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1 explicit material -- colloquially, we could say the porn  
2 industry, and I suppose -- I mean, that's as good a --  
3 that's as clear a representation I think I could make  
4 about it.

5 **Q. Okay. In that first paragraph of your answer,**  
6 **you use the term "clearly mature adult." Can you**  
7 **describe what you mean by that term?**

8 A. In this context, this would be -- well, people  
9 who could not be mistaken for minors, for one thing.  
10 But, as I said, most of the people involved in this kind  
11 of work that I've done have been in their 30s and 40s.  
12 So what I mean is over the age of majority, by "clearly  
13 mature."

14 **Q. In your educational background, all of the**  
15 **extensive education you've had, as part of that, did you**  
16 **ever receive any training or education upon which you**  
17 **could base your opinion that someone is clearly mature**  
18 **at a particular age?**

19 A. No. No, I rely on IDs for that. When I have  
20 to make a distinction about somebody's age, that's the  
21 way that it has to be done.

22 **Q. And no part of your education involved -- I**  
23 **mean, I understand you took classes in human sexuality.**

24 A. Sure.

25 **Q. Was there any aspect of it that discussed human**

1 question, and we check IDs. So it wouldn't be  
2 appropriate for us to try to determine that in any other  
3 way.

4 **BY MR. SCHWARTZ:**

5 **Q. Would you agree with me that it is difficult to**  
6 **tell the specific age of a person just by visual**  
7 **observation without checking their ID?**

8 A. The specific age?

9 **Q. Yes.**

10 A. Sure, but that's not how we try to do it in  
11 this context.

12 **Q. And that's why you check IDs, because you can't**  
13 **tell just by looking at someone?**

14 A. One of the reasons to check IDs is because that  
15 takes some of the guesswork out of figuring out how old  
16 someone is, yes.

17 **Q. And having checked the ID, that allows you to**  
18 **be more competent about a person's age?**

19 A. That's right.

20 **Q. Especially for you, you would not turn away**  
21 **someone who is 18 from a Masturbate-a-Thon, correct?**

22 A. I would not turn away someone who was 18 and  
23 had the proper ID.

24 **Q. Do you -- through any of your training, do you**  
25 **know the physiological and psychological differences**

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1 **biology?**

2 A. Sure, discussion of Tanner stages and so forth,  
3 but I'm not a specialist in any of that. That's not  
4 something that I can state that I have enough expertise  
5 in.

6 **Q. But you're familiar with how individuals are**  
7 **judged as to being when they become sexually mature or**  
8 **through puberty?**

9 A. Generally, but sexual maturity and age of  
10 majority are two completely different things. They  
11 can't be confused, especially not in a situation like  
12 this.

13 **Q. And you would agree with me that it is**  
14 **difficult to tell just by an image when a person age-wise**  
15 **becomes sexually mature?**

16 **MS. BAUMGARDNER:** Objection.

17 **THE WITNESS:** Well, I would say that it's not  
18 difficult to tell by most images if someone is of age.  
19 In the world in which I'm primarily working, as I've  
20 told you, few people are very young. And by "very  
21 young," I mean close to 18, above but close. So it is,  
22 in a way, difficult to watch people walking in who are  
23 in their 30s and 40s and know that it's -- you know, we  
24 check their ID anyway. We take their paperwork anyway,  
25 but it's not a question. And it's very rarely a

1 **between an 18-year-old and a 16-year-old?**

2 A. That would really depend on individual people.  
3 I can't generalize to age 18 and age 16, and I don't  
4 know that my training is sufficient to allow me to say  
5 that I have real expertise in this topic. My work is in  
6 adult sexuality, so that's a different level of  
7 expertise.

8 **Q. Is there a reason why you can't generalize the**  
9 **differences between a 16-year-old and an 18-year-old?**

10 A. Because people mature at different rates, and  
11 I'm conscious of the need to see people as individuals  
12 rather than aggregates.

13 **Q. And, based on your training, would you agree**  
14 **with me that someone can reach sexual maturity prior to**  
15 **age 18?**

16 A. Not legal sexual maturity, no. The biology of  
17 it, I suppose, would be yes. It's not something that  
18 would ever be germane to this work that I do, though.

19 **Q. Right. But it is possible for someone to**  
20 **become physically sexually mature before they reach the**  
21 **age of 18?**

22 A. In certain cases, yes, I guess so.

23 **Q. You talked about this a little bit, in your**  
24 **answer to No. 7. You responded that artists are subject**  
25 **to 2257. What did you mean by that specifically?**

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1 materials subject to 2257. I think we just talked about  
2 one example.  
3 A. Right.  
4 Q. Are there any other examples that you know of?  
5 A. That's an example. Individuals who might be  
6 making erotic materials to share with their partner,  
7 people who put up their exhibitionistic or frisky  
8 pictures on websites. Web camming might be an example  
9 of this. Some people do it not for money but for other  
10 reasons. Sexting might be included in this sort of  
11 thing. Certainly taking cell phone or electronic camera  
12 shots in private moments would potentially, particularly  
13 if they got out of a couple or an individual's hands,  
14 then make this kick in, as I understand it.  
15 Q. Okay. Do you know any private individuals who  
16 are producing sexually explicit materials in the course  
17 of their private sex lives who are complying with 2257?  
18 A. No. And I should say, it's not that I don't  
19 know people who are using cameras in their private sex  
20 lives. I do know people like that. I don't know anyone  
21 who is complying with 2257.  
22 Q. Okay. And is there -- we may have already  
23 discussed it, but I want to sort of break it out as an  
24 individual question.  
25 Why do you think that the statute applies to

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1 individuals who are taking sexually explicit images or  
2 videos in their private sex lives?  
3 MS. BAUMGARDNER: Objection.  
4 THE WITNESS: Not being an attorney, I can tell  
5 you what my cultural concern is, rather than giving you  
6 my legal opinion.  
7 BY MR. SCHWARTZ:  
8 Q. Sure.  
9 A. My cultural concern is two-fold: One is,  
10 people who make private materials aren't always  
11 successful at keeping them private. And once something  
12 like this becomes public -- an excellent example of this  
13 would be a revenge website -- then it is now a produced  
14 and published item. And my understanding of 2257 -- and  
15 this is the other piece. This is connected. My  
16 understanding of 2257 is that it doesn't make exceptions  
17 for such things, that it probably was written at a time  
18 when this was not a common phenomenon, but it certainly  
19 is now.  
20 So whenever I do public speaking these days, I  
21 warn people about -- especially young people, if I'm  
22 talking to college students, I warn them that what has  
23 become a common courtship ritual is potentially going to  
24 subject them to real legal problems. And if someone who  
25 is under 18 -- and I don't really go talk to people who

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1 are under 18. But if someone were under 18, then they  
2 not only potentially would be up against 2257, they  
3 would be making child porn. And I'm very, very  
4 concerned about that.  
5 Q. Do you know any individuals whose private sex  
6 lives have been affected by 2257?  
7 MS. BAUMGARDNER: Objection.  
8 THE WITNESS: I think most private individuals  
9 have no clue that they should consider their private sex  
10 life potentially affected by 2257. So the answer is no,  
11 but that doesn't mean that they wouldn't potentially be  
12 affected under some circumstances.  
13 BY MR. SCHWARTZ:  
14 Q. Do you know of any individuals who have been  
15 prosecuted under 2257 for sending sexually explicit  
16 depictions of themselves privately to their significant  
17 other?  
18 A. I do not know of anyone that falls under that  
19 description, no.  
20 Q. Do you know of any private individuals who have  
21 been subject to a 2257 inspection?  
22 A. No.  
23 Q. Going back to the interrogatories, No. 8 --  
24 actually, we already talked about -- yeah, we already  
25 discussed how you collect them and where you keep them

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1 and how many you have.  
2 In Interrogatory No. 9 -- we did touch a little  
3 bit on this earlier -- I'm just wondering if you can  
4 give an estimate on the number of people who have come  
5 to your Masturbate-a-Thons between the ages of 18 and  
6 25?  
7 A. I could not tell you conclusively, but people  
8 under 25 are the exception, not the rule. And I can  
9 estimate the percentage of people under 25 as being  
10 10 percent or fewer. I don't know if that's helpful.  
11 Q. That's a perfectly good response. That's what  
12 you believe.  
13 For Interrogatory No. 10, in your response you  
14 state that there are a number of images that you would  
15 publish as a part of your work were it not for the 2257  
16 requirements.  
17 I just want to confirm that we've already  
18 basically discussed that as sort of your art and collage  
19 images?  
20 A. And we likely would make different choices  
21 about the Masturbate-a-Thons if we felt it was safer to  
22 do it, so the Masturbate-a-Thon is also relevant to this  
23 question, I think.  
24 Q. And just on sort of the images you would  
25 publish, would you publish more images from the

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1 addition to the experience that the photographers get  
2 from doing that photo shoot, they also make those  
3 available to the couple. So that's a variant, I think,  
4 of what you're asking me.

5 **Q. Yes. And those were not made generally**  
6 **available. It was just for the couple who was**  
7 **participating in the photo session?**

8 A. Our agreement with the photo club photographers  
9 is that unless they get a separate release from the  
10 models -- we're attempting to install in them good  
11 practices around 2257 compliance, in asking them to do  
12 this; it's the reason that we do it -- we ask that they  
13 not do anything else with those images. So, really, the  
14 images exist for the use of the models and of the  
15 photographers on a learning level, not a publication  
16 level.

17 **Q. And the couples that were photographed, you did**  
18 **the ID check and the model releases?**

19 A. Yes, absolutely right.

20 **Q. And they signed the releases?**

21 A. Yes.

22 **Q. Do you know any photographers that it's**  
23 **their -- sort of their profession to take pictures of**  
24 **couples engaged in sexually explicit material for their**  
25 **own private use?**

1 **that you believe is burdensome to the point of being**  
2 **unconstitutional.**

3 A. Burdens would include the fact that the  
4 provisions in 2257 might fall upon people that perhaps  
5 they weren't intended to in the first place. They  
6 certainly seem to relate to all sexual depictions, and  
7 that, it seems to me, is overly broad, and for that  
8 reason is burdensome. This last set of discussions  
9 we've been having about people's private uses and stuff,  
10 that seems relevant to this question to me.

11 The way that the recordkeeping requirements can  
12 be onerous, particularly for a small entity -- a big  
13 entity that does this all the time, it's my  
14 understanding that all those guys did their best to find  
15 out how they could comply as soon as they possibly  
16 could. And it's the journalists, the artists, the  
17 community-based organizations like mine, and the people  
18 who don't -- and also the people who don't even know  
19 that 2257 might relate to them, I think it's safe to say  
20 that most Americans don't actually know anything about  
21 these regulations. And some subset of those people are  
22 engaging in some kind of sexually frisky behavior that  
23 might at some point land them in this field of concern.

24 The other thing that I will say in answer to  
25 your question is sort of a more personal one, but I

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Page 112

1 A. For their own private use?

2 **Q. The couple's private use.**

3 A. Right, right. As opposed to them having copies  
4 of the pictures, but the photographer also being free to  
5 publish that or use it in some other way? Is that what  
6 you mean?

7 **Q. Yes.**

8 A. I know that there are photographers who  
9 advertise those kinds of services. I don't believe I  
10 know anybody who restricts their photographic work to  
11 that, personally.

12 **Q. I know we've talked a little bit about this,**  
13 **but just to make sure I've got everything covered. You**  
14 **have read Section 2257, correct?**

15 A. Yes.

16 **Q. Have you read the regulations that go along**  
17 **with it?**

18 A. I don't think so.

19 **Q. Do you understand the difference between the**  
20 **statute and the regulations?**

21 A. I'm not sure that I do.

22 **Q. Okay. One of the other claims is that the**

23 **Statute 2257 is burdensome. Are you familiar with that?**

24 A. Uh-huh. Yes.

25 **Q. Can you describe for me what those burdens are,**

1 imagine that it is a sentiment that other people who are  
2 plaintiffs here and who are in relevant situations to us  
3 may feel. And that's that these are Federal charges,  
4 and they're frightening to contemplate. The degree of  
5 responsibility that I have for my nonprofit affects its  
6 well-being and it affects my well-being, and it's kind  
7 of terrifying. It's kind of terrifying. So that's part  
8 of my answer to that question.

9 I think the people who are not worried about  
10 these regulations are mostly the people who don't know  
11 they exist.

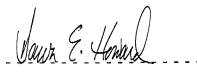
12 **Q. Okay. So previously we talked about your**  
13 **understanding in sort of a layperson's understanding of**  
14 **narrowly tailored. You've also just discussed what some**  
15 **of the burdens are that you believe.**

16 **Are there any other reasons that you have that**  
17 **you believe 2257 is unconstitutional?**

18 **MS. BAUMGARDNER:** Objection.

19 **THE WITNESS:** This makes me want to go back to  
20 school and be a constitutional scholar.

21 **MS. BAUMGARDNER:** I will make an objection for  
22 the record that I think it is an unfair question,  
23 asking, you know, this plaintiff how a law is  
24 unconstitutional. But to the best of her ability, I'll  
25 allow her to answer.

<div>Page 121</div> <div> <div>1 because it is possible for a minor to look over 18?</div> <div>2 MS. BAUMGARDNER: Objection.</div> <div>3 THE WITNESS: I would imagine that it is</div> <div>4 possible for a minor to look over 18. That is not</div> <div>5 something that is my area of expertise, but clearly this</div> <div>6 is -- I'm going to leave it there.</div> <div>7 BY MR. SCHWARTZ:</div> <div>8 Q. And why is it your belief that it's a good</div> <div>9 practice to check IDs no matter what?</div> <div>10 A. Because treating everybody who comes in the</div> <div>11 door the same way is wise, for one thing. That way</div> <div>12 people's interpretation doesn't overlay the policy and</div> <div>13 the procedure. Because it's illegal for someone under</div> <div>14 18 to be in a sexually explicit depiction or to access</div> <div>15 sexually explicit space, and the effects on that person</div> <div>16 are what the law is attempting to protect them from.</div> <div>17 And we also have a stake in protecting them from those,</div> <div>18 and we have a stake in protecting the other people there</div> <div>19 from the accusation that people may have been under 18.</div> <div>20 So, really, the protection goes both ways in</div> <div>21 terms of that policy and in terms of the law.</div> <div>22 MR. SCHWARTZ: That's all I have. I wanted to</div> <div>23 ask about signing reading and signing.</div> <div>24 MS. BAUMGARDNER: Okay. We'll stay and work on</div> <div>25 the spellings after we're off the record, and we will</div> </div>	<div>Page 123</div> <div> <div>1 STATE OF CALIFORNIA )</div> <div>2 ) Ss.</div> <div>3 COUNTY OF SAN FRANCISCO )</div> <div>4</div> <div>5 I hereby certify that the witness in the</div> <div>6 foregoing deposition, CAROL A. QUEEN, Ph.D., was by me</div> <div>7 duly sworn to testify to the truth, the whole truth, and</div> <div>8 nothing but the truth, in the within-entitled cause;</div> <div>9 that said deposition was taken at the time and place</div> <div>10 herein named; that the deposition is a true record of</div> <div>11 the witness's testimony as reported by me, a duly</div> <div>12 certified shorthand reporter and a disinterested person,</div> <div>13 and was thereafter transcribed into typewriting by</div> <div>14 computer.</div> <div>15 I further certify that I am not interested in</div> <div>16 the outcome of the said action, nor connected with, nor</div> <div>17 related to any of the parties in said action, nor to</div> <div>18 their respective counsel.</div> <div>19 IN WITNESS WHEREOF, I have hereunto set my hand</div> <div>20 this 30th day of April, 2013.</div> <div>21</div> <div>22 </div> <div>23</div> <div>24 DAWN E. HOWARD, CSR NO. 13201</div> <div>25 STATE OF CALIFORNIA</div> </div>
<div>Page 122</div> <div> <div>1 waive then.</div> <div>2 (At 12:21 P.M., the deposition proceedings</div> <div>3 concluded.)</div> <div>4</div> <div>5</div> <div>6 -----</div> <div>7 CAROL A. QUEEN, Ph.D.</div> <div>8</div> <div>9</div> <div>10</div> <div>11</div> <div>12</div> <div>13</div> <div>14</div> <div>15</div> <div>16</div> <div>17</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div> </div>	



**In The Matter Of:**  
*FREE SPEECH COALITION, INC. v*  
*THE HONORABLE ERIC H. HOLDER,*

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*March 15, 2013*

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*SOUTHERN DISTRICT REPORTERS*  
*500 PEARL STREET*  
*NEW YORK, NY 10007*  
*212 805-0330*

Original File d3fnrosd.txt

Min-U-Script® with Word Index

March 15, 2013

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1                                Ross  
2       UNITED STATES DISTRICT COURT  
3       EASTERN DISTRICT OF PENNSYLVANIA  
4       -----x  
5       FREE SPEECH COALITION, INC. et  
6       al.,  
7                                Plaintiffs,  
8       v.                                No. 09-4607  
9       THE HONORABLE ERIC H. HOLDER,  
10       Defendant.  
11       -----x  
12    March 15, 2013  
13    9:00 a.m.  
14       Deposition of CARLIN ROSS, taken by  
15       Defendant, at the United States Attorney's  
16       office, One St. Andrew's Plaza, New York, New  
17       York, before Samuel G. Mauro, Jr., a Registered  
18       Merit Reporter and Notary Public of the State of  
19       New York.  
20  
21  
22  
23  
24  
25

Page 2

1                                Ross  
2                                A P P E A R A N C E S  
3  
4       BERKMAN, GORDON, MURRAY & DEVAN  
5       Attorneys for Plaintiffs  
6                55 Public Sq., Ste. 2200  
7                Cleveland, OH 44113-2000  
8       BY: LORRAINE BAUMGARDNER, ESQ.  
9  
10  
11       United States Department of Justice  
12       Civil Division, Federal Programs Branch  
13                Attorneys for Defendant  
14                20 Massachusetts Avenue, N.W.  
15                Room 7130  
16                Washington, DC 20530  
17       BY: KATHRYN WYER, ESQ.  
18                HECTOR G. BLADUELL, ESQ.  
19  
20  
21  
22  
23  
24  
25

Page 3

1                                Ross  
2       CARLIN ROSS,  
3       called as a witness by the Defendant,  
4       having been duly sworn, testified as follows:  
5       EXAMINATION  
6       BY MR. BLADUELL:  
7       Q.    Good morning, Ms. Ross. We thank you  
8       for being here with us to explain your claim.  
9                My name is Hector Bladuell. I  
10       represent the government in this case.  
11                Have you been deposed before?  
12       A.    Yes, I have.  
13       Q.    When have you been deposed?  
14       A.    It was a case when I was counsel at a  
15       company years ago on an insurance claim, 9/11  
16       business interruption insurance claim.  
17       Q.    You are an attorney also, correct?  
18       A.    Yes, I am.  
19       Q.    As you know, the purpose of this  
20       deposition is not to discuss the merits of your  
21       claim.  
22       A.    Yes.  
23       Q.    The purpose is to understand better  
24       your claim.  
25                To do that I am going to ask you

Page 4

1                                Ross  
2       several questions.  
3                Your counsel is probably going to have  
4       at most two objections during this examination.  
5       Unless she instructs you not to answer, you  
6       should answer the question if you know the  
7       answer.  
8                If you don't understand my question,  
9       please ask me, and I will rephrase it. If you  
10       need a break, please ask me and we will break.  
11                Do you have any condition that would  
12       impair you from understanding my questions  
13       today?  
14       A.    No.  
15       Q.    Are you under any medication that  
16       would impair your ability to understand my  
17       questions today?  
18       A.    No.  
19       Q.    Do you also understand that you have  
20       taken an oath to tell the truth today?  
21                Yes?  
22       A.    Yes.  
23       Q.    Before I begin, do you have any  
24       questions at this point about the deposition?  
25       A.    No.

Page 5	Page 7
<p>1 Ross</p> <p>2 Q. Ms. Ross, have you prepared for this</p> <p>3 deposition?</p> <p>4 A. Yes.</p> <p>5 Q. How have you prepared for the</p> <p>6 deposition?</p> <p>7 A. I met with Lorraine and we just went</p> <p>8 over answers to some of the interrogatories.</p> <p>9 Q. Besides the answers for the</p> <p>10 interrogatories, did you go through any other</p> <p>11 documents?</p> <p>12 A. No.</p> <p>13 Q. So you reviewed the answers to the</p> <p>14 first set of interrogatories, correct?</p> <p>15 A. Correct.</p> <p>16 Q. The second set of interrogatories?</p> <p>17 A. I believe so, yes.</p> <p>18 Q. The requests for admissions?</p> <p>19 A. Yes.</p> <p>20 Q. The requests for production?</p> <p>21 A. Yes.</p> <p>22 Q. Did you make any notes to prepare for</p> <p>23 this deposition?</p> <p>24 A. No.</p> <p>25 Q. You don't have any notes with you</p>	<p>1 Ross</p> <p>2 A. Yes, the New York bar.</p> <p>3 Q. You are a member in good standing?</p> <p>4 A. Yes.</p> <p>5 Q. You have never been suspended or</p> <p>6 reprimanded?</p> <p>7 A. No.</p> <p>8 Q. Do you currently practice law?</p> <p>9 A. No.</p> <p>10 Q. After law school, what was your first</p> <p>11 job?</p> <p>12 A. My first job was working as general</p> <p>13 counsel of Globex Corporation.</p> <p>14 Q. What did you do as general counsel of</p> <p>15 that corporation?</p> <p>16 A. Mostly contractual-based work. We</p> <p>17 were an Internet service provider, so it was</p> <p>18 heavy service agreements. Then we would bring</p> <p>19 in programmers from India and Russia with H-1Bs</p> <p>20 and stuff like that, and so some immigration,</p> <p>21 employee manuals, like all that corporate kind</p> <p>22 of stuff.</p> <p>23 Q. You did this job for how long?</p> <p>24 A. I guess it was three years.</p> <p>25 Q. Three years. After this job what did</p>
Page 6	Page 8
<p>1 Ross</p> <p>2 today?</p> <p>3 A. No.</p> <p>4 Q. Did you participate in preparing the</p> <p>5 discovery responses?</p> <p>6 A. Yes.</p> <p>7 Q. All of the ones I just mentioned?</p> <p>8 A. Yes.</p> <p>9 Q. Let's talk a little bit about your</p> <p>10 education.</p> <p>11 A. Sure.</p> <p>12 Q. You went to law school where?</p> <p>13 A. I went to Brooklyn Law School.</p> <p>14 Q. You graduated when?</p> <p>15 A. '98.</p> <p>16 Q. '98. It is not so long ago. That</p> <p>17 year you took the bar, correct?</p> <p>18 A. Yes.</p> <p>19 Q. You passed the bar?</p> <p>20 A. I did, first time, yes.</p> <p>21 Q. Great. Are you still a member of a</p> <p>22 bar?</p> <p>23 A. Yes.</p> <p>24 Q. What is this bar? The New York bar, I</p> <p>25 assume?</p>	<p>1 Ross</p> <p>2 you do?</p> <p>3 A. Then I went independent. I guess I</p> <p>4 was self-employed. I was hired by companies to</p> <p>5 roll up assets of failed dot-coms. I joined an</p> <p>6 LLC, and we rolled up the assets of a company</p> <p>7 Pseudo Programs and relaunched as an online</p> <p>8 broadcaster. That's how I segued from law to</p> <p>9 media.</p> <p>10 Q. After this job is when you started</p> <p>11 working with Betty Dodson, correct?</p> <p>12 A. There were a few years that I was</p> <p>13 independent, so after that job I started a</p> <p>14 website. I was blogging, and then I interviewed</p> <p>15 Betty.</p> <p>16 Q. What were you blogging about?</p> <p>17 A. Female sexuality and relationships.</p> <p>18 Q. Do you have any training in sexuality?</p> <p>19 A. No.</p> <p>20 Q. What was your bachelor's degree in?</p> <p>21 A. Political science.</p> <p>22 Q. You have no medical training?</p> <p>23 A. No.</p> <p>24 Q. Any courses that you took before law</p> <p>25 school about sexuality?</p>

Page 9	Page 11
<p>1 Ross</p> <p>2 A. No.</p> <p>3 Q. Or male or female genitalia?</p> <p>4 A. No.</p> <p>5 Q. Any courses you have taken after law</p> <p>6 school about genitalia?</p> <p>7 A. No.</p> <p>8 Q. About sexuality?</p> <p>9 A. No.</p> <p>10 Q. So how do you know about sexuality and</p> <p>11 genitalia?</p> <p>12 MS. BAUMGARDNER: Objection. Go</p> <p>13 ahead.</p> <p>14 A. I guess I did my own studies, and I</p> <p>15 have been practicing with Betty now for five</p> <p>16 years. And we have traveled the world</p> <p>17 lecturing. Betty is the number one sexologist</p> <p>18 in the world, so I guess that's more like</p> <p>19 training. It is more of an apprenticeship.</p> <p>20 Q. Before you started with Ms. Dodson,</p> <p>21 what kind of how did you acquire the knowledge</p> <p>22 about sexuality and genitalia?</p> <p>23 MS. BAUMGARDNER: Objection.</p> <p>24 Go ahead.</p> <p>25 A. Reading books. Reading books,</p>	<p>1 Ross</p> <p>2 Q. Can you please describe what you do</p> <p>3 with Betty Dodson in this business?</p> <p>4 A. Sure. I am editor in chief of the</p> <p>5 website. So we have --</p> <p>6 Q. What is the name of this website. I'm</p> <p>7 sorry to interrupt.</p> <p>8 A. That's OK. Dodsonandross.com.</p> <p>9 Q. OK.</p> <p>10 A. We have 25 writers. So I manage the</p> <p>11 writers. I decide what kind of content we are</p> <p>12 going to go after at what time, like any editor</p> <p>13 of a magazine.</p> <p>14 I have the whole technical strategy of</p> <p>15 the website. I run the website. I am not a</p> <p>16 programmer, but I sit on top of them and manage</p> <p>17 work that needs to be done from our affiliate</p> <p>18 sales and affiliate deals to all of our customer</p> <p>19 service, to our product fulfillment -- we have a</p> <p>20 lot of original product -- to the video</p> <p>21 production.</p> <p>22 Q. Are you the president of -- is there a</p> <p>23 company name?</p> <p>24 A. Yes. Bad Media LLC, which is Betty</p> <p>25 Anne Dodson.</p>
Page 10	Page 12
<p>1 Ross</p> <p>2 educating myself.</p> <p>3 Q. Do you recall any books in particular</p> <p>4 that you read?</p> <p>5 A. Good question.</p> <p>6 You know I wouldn't say I read</p> <p>7 anything specifically about female genitalia,</p> <p>8 maybe more about body image. "Why We Love" by</p> <p>9 Helen Fisher; "She Comes First," Ian Kerner;</p> <p>10 "The Ethical Slut"; "The Guide to Getting It</p> <p>11 On."</p> <p>12 What else? That would be pretty</p> <p>13 much -- I mean "The Guide to Getting It On" is</p> <p>14 kind of a 2,000-page primer.</p> <p>15 Q. Did any of these books discuss how you</p> <p>16 would determine someone's age by looking at</p> <p>17 them?</p> <p>18 A. No.</p> <p>19 Q. By looking at their genitals?</p> <p>20 A. No.</p> <p>21 Q. You said you are working with Betty</p> <p>22 Dodson?</p> <p>23 A. Yes.</p> <p>24 Q. Since what year?</p> <p>25 A. Since 2006.</p>	<p>1 Ross</p> <p>2 Q. Betty Anne Dodson.</p> <p>3 A. LLC.</p> <p>4 Q. Bad Media is the holding company?</p> <p>5 A. Well, it is a limited liability</p> <p>6 corporation.</p> <p>7 Q. Limited liability corporation. Do you</p> <p>8 have other companies that Bad Media owns?</p> <p>9 A. No.</p> <p>10 Q. So the website is owned -- the name of</p> <p>11 the website BettyDodson.com? bettyandross.com?</p> <p>12 A. dodsonandross.com.</p> <p>13 Q. Is that website owned by the company?</p> <p>14 A. Yes.</p> <p>15 Q. Are you the president of the company?</p> <p>16 A. Yes.</p> <p>17 Q. You have been the president since</p> <p>18 when?</p> <p>19 A. Inception, so I guess I was like 2007</p> <p>20 I believe.</p> <p>21 Q. Is Betty Dodson your superior?</p> <p>22 A. She is the founder. She is the big</p> <p>23 boss, yes.</p> <p>24 Q. So you report to her?</p> <p>25 A. Yes.</p>

Page 13	Page 15
<p>1 Ross</p> <p>2 Q. She doesn't report to you?</p> <p>3 A. No.</p> <p>4 Q. Is there a Genital Art Gallery in this</p> <p>5 website?</p> <p>6 A. Yes.</p> <p>7 Q. Do you manage the content of that</p> <p>8 gallery?</p> <p>9 A. Yes.</p> <p>10 Q. Ms. Dodson, does she manage the</p> <p>11 content, too? Is it a joint operation?</p> <p>12 A. I would say, yes, it's joint.</p> <p>13 Q. You said you managed the videos,</p> <p>14 correct?</p> <p>15 A. Yes.</p> <p>16 Q. Would you say that you are the best</p> <p>17 person along with -- do you have any other</p> <p>18 employees?</p> <p>19 A. No.</p> <p>20 Q. So you would be the person that knows</p> <p>21 more about the videos and the depictions in the</p> <p>22 gallery?</p> <p>23 A. Yes.</p> <p>24 Q. Do you have any publications?</p> <p>25 A. What do you mean by "publications"?</p>	<p>1 Ross</p> <p>2 kind of manage what people are clicking on, what</p> <p>3 they're looking for. Because we're really</p> <p>4 global. We are in every country but</p> <p>5 Turkmenistan and three countries in Africa. So</p> <p>6 we're accessed worldwide.</p> <p>7 Q. The phrase that is most used is "how</p> <p>8 to make a girl come"?</p> <p>9 A. After "Betty Dodson." Betty is first.</p> <p>10 Then it's "how to make a girl come."</p> <p>11 Q. Do you recall any other phrases in the</p> <p>12 top five?</p> <p>13 A. Oh, God.</p> <p>14 It is always "Betty Dodson," "how to</p> <p>15 make a girl come," then "Betty Dobson," d-o-b,</p> <p>16 so I bought that keyword because I saw they were</p> <p>17 spelling it wrong, "female orgasm" and then</p> <p>18 "pussy." Sorry.</p> <p>19 Q. Anything else that you recall at this</p> <p>20 point?</p> <p>21 A. Sure. I mean all kinds of words like</p> <p>22 "threesomes."</p> <p>23 "Genital shame" is a big one. "Am I</p> <p>24 normal?" We get a lot of that. They will give</p> <p>25 you hundreds of them, but it is kind of</p>
Page 14	Page 16
<p>1 Ross</p> <p>2 Q. Articles that you have written.</p> <p>3 A. Yes.</p> <p>4 Q. How many?</p> <p>5 A. A few. I have a column now on</p> <p>6 Huffington Post. So I think maybe four, because</p> <p>7 we just started.</p> <p>8 Q. Have you written any books?</p> <p>9 A. Yes. I just launched my book a month</p> <p>10 ago. I am so excited.</p> <p>11 Q. What is the name of the book?</p> <p>12 A. "How to Make a Girl Come." I just</p> <p>13 want to say for the record I chose that name</p> <p>14 because it is a the most searched phrase that</p> <p>15 people use to find the site. That's why I did</p> <p>16 it.</p> <p>17 Q. How do you know that it's the phrase</p> <p>18 that most people use to search the site?</p> <p>19 A. We have an account with Google</p> <p>20 Analytics, so you can go in if you link your</p> <p>21 website to it, and it will tell you what's the</p> <p>22 most popular content what are the top keywords,</p> <p>23 where people are coming from all over the world</p> <p>24 to visit your site.</p> <p>25 That is a large part of what I do is I</p>	<p>1 Ross</p> <p>2 permutations, and most of it is focused on</p> <p>3 genital and genital issues and orgasm for women.</p> <p>4 Q. Any search terms related to "young"?</p> <p>5 A. No.</p> <p>6 Q. Or "teen"?</p> <p>7 A. We don't get any "barely legal," no.</p> <p>8 Q. How would you described division of</p> <p>9 work in this Bad Media company between you and</p> <p>10 Betty Dodson?</p> <p>11 A. Betty is the brand. Betty has a very</p> <p>12 authentic kind of unspoiled brand. She answers</p> <p>13 the sex questions. We get about 20 to 30 sex</p> <p>14 questions from the web a day, and she answers</p> <p>15 those. Then I would say I'm kind of the</p> <p>16 one-woman show behind that.</p> <p>17 Q. Do you consider Betty Dodson an expert</p> <p>18 in sexuality?</p> <p>19 A. Yes.</p> <p>20 Q. Do you consider her an expert in</p> <p>21 genitals?</p> <p>22 A. Yes.</p> <p>23 Q. Does Betty Dodson manage the</p> <p>24 day-to-day operations of the company?</p> <p>25 A. To a certain degree because I include</p>



Page 25	Page 27
<p>1 Ross</p> <p>2 Q. The videos are mostly about</p> <p>3 masturbation, correct?</p> <p>4 A. Correct.</p> <p>5 Q. And display of the genitals?</p> <p>6 A. Yes.</p> <p>7 Q. Would you say 99 percent of the videos</p> <p>8 are about masturbation?</p> <p>9 A. Yes.</p> <p>10 Q. So what sexually explicit videos has</p> <p>11 your company produced since 2005?</p> <p>12 A. I think The Orgasm Doctor, then a</p> <p>13 Manual Skills series, our Sex Positions with Sex</p> <p>14 Toys series. I think that's in 2005. I think</p> <p>15 that's it.</p> <p>16 Q. So you mentioned the Orgasm Doctor?</p> <p>17 A. Yes.</p> <p>18 Q. You mentioned the Manual Skills</p> <p>19 series?</p> <p>20 A. Yes.</p> <p>21 Q. Then you mentioned another one? A</p> <p>22 third one?</p> <p>23 A. Sex Positions with Sex Toys.</p> <p>24 Q. Sex Positions with Sex Toys, what year</p> <p>25 was it produced?</p>	<p>1 Ross</p> <p>2 A. Yes.</p> <p>3 Q. Were you the one responsible for</p> <p>4 managing that access?</p> <p>5 A. Yes.</p> <p>6 Q. It was not Betty Dodson?</p> <p>7 A. No.</p> <p>8 Q. Did you grant us complete access to</p> <p>9 all the videos shown on your website?</p> <p>10 A. I believe so, yes.</p> <p>11 Q. So you didn't select a portion of</p> <p>12 videos?</p> <p>13 A. I don't believe so.</p> <p>14 Q. For us to see.</p> <p>15 So all the videos on your website are</p> <p>16 accessible to us free of charge?</p> <p>17 A. I believe so, yes.</p> <p>18 Q. You said you believe so. Are you sure</p> <p>19 about it or you're not sure about it?</p> <p>20 A. I am a not a hundred percent because</p> <p>21 it was done a while ago. I can't remember how</p> <p>22 much I gave you. I think I gave you everything.</p> <p>23 MS. BAUMGARDNER: Can we go off the</p> <p>24 record for a minute. If you want to go back</p> <p>25 on --</p>
Page 26	Page 28
<p>1 Ross</p> <p>2 A. I think it was 2010 or 2011.</p> <p>3 Q. And the one -- the Manual Skills?</p> <p>4 A. Yes.</p> <p>5 Q. What year was that produced?</p> <p>6 A. I believe that was 2009 or 2010</p> <p>7 because we kind of did them really close</p> <p>8 together.</p> <p>9 Q. Any other videos produced since 2005?</p> <p>10 A. I don't believe so.</p> <p>11 Q. Before 2005?</p> <p>12 A. Yes.</p> <p>13 Q. What videos have you produced?</p> <p>14 A. That was pre-me. I came in in --</p> <p>15 Q. 2005?</p> <p>16 A. Yes. Betty did the Joy of Self-joy,</p> <p>17 Viva La Vulva, Celebrating Orgasm, Orgasmic</p> <p>18 Women, and The Orgasm Doctor. I think she shot</p> <p>19 it and then I worked on the editorial.</p> <p>20 Q. You granted us access to your website,</p> <p>21 correct?</p> <p>22 A. Yes.</p> <p>23 Q. You gave us a user name?</p> <p>24 A. Yes.</p> <p>25 Q. And a password?</p>	<p>1 Ross</p> <p>2 Q. I'm sorry. Do you have a question</p> <p>3 about a question that I have asked?</p> <p>4 A. To ask you?</p> <p>5 Q. Yes.</p> <p>6 A. No, I don't.</p> <p>7 MR. BLADUELL: So why are you --</p> <p>8 MS. BAUMGARDNER: I just want to</p> <p>9 clarify. My understanding is we granted you</p> <p>10 access.</p> <p>11 MR. BLADUELL: I am not asking you for</p> <p>12 your understanding, counsel.</p> <p>13 MS. BAUMGARDNER: I was just going to</p> <p>14 go off the record so I could explain to you what</p> <p>15 we did.</p> <p>16 MR. BLADUELL: Can we go off the</p> <p>17 record, please.</p> <p>18 (Discussion off the record)</p> <p>19 Q. Ms. Ross.</p> <p>20 A. Yes.</p> <p>21 Q. I am going to show you a document. It</p> <p>22 is a printout of your website that I printed</p> <p>23 out. I am going to mark it as Exhibit 1.</p> <p>24 A. That lists all the videos, OK, easy.</p> <p>25 (Exhibit RD-1 marked for</p>

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<p>1 Ross 2 identification) 3 Q. We? 4 MR. BLADUELL: have marked the 5 exhibit as RD-1, Ross Dodson. 6 MS. BAUMGARDNER: May I see a copy of 7 that, please. 8 MR. BLADUELL: Yes. That's your copy. 9 I'm sorry. This is your copy. 10 For the record I'm handing a copy to 11 the witness, Carlin Ross, and to counsel. 12 Q. This is a copy of the section my 13 account. 14 A. Yes. 15 Q. Related to the access that you 16 provided us? 17 A. Uh-huh. 18 MS. BAUMGARDNER: You have to answer 19 verbally, Carlin. 20 THE WITNESS: Sorry. 21 MR. BLADUELL: Thank you, counsel. 22 A. Yes. 23 Q. It lists the videos that we have 24 access to, correct? 25 A. Correct.</p>	<p>1 Ross 2 verbally. 3 A. Yes. 4 MR. BLADUELL: Thank you, counsel. 5 Q. Women Using Homemade Zucchini Dildo, 6 2005? 7 A. Yes. Those are, the next bunch are 8 all 2009 or 2010. 9 Q. The next bunch, you mean which ones? 10 A. From Women Masturbating with Barbell 11 and mystic to Right-Angle Position with Hitachi 12 Magic Wand. 13 Those were all produced together. 14 Q. In 2010? 15 A. Yes. 16 Q. Now, now you have said that these are 17 not all the videos available for purchase, 18 right, in your website? 19 A. Yes. 20 Q. How do you select these videos and 21 excluded others? 22 A. Well, I have to go into each clip and 23 go into a little tab that says access control 24 and add your user. 25 So when I was doing it -- you know,</p>
Page 30	Page 32
<p>1 Ross 2 Q. Videos that are not on this list we 3 don't have access to, correct? 4 A. Correct. I think there are just two I 5 missed. 6 Q. I'm sorry. 7 Could you explain what you are saying? 8 A. I think there are two clips I didn't 9 give you access to on this list. 10 Q. That is fine. 11 A. OK. 12 Q. Let's just stay in this document for a 13 while. 14 A. Sure. 15 Q. Orgasmic Women is a video produced in 16 2005, correct? 17 A. Yes. 18 Q. Manual Skills is a video you said you 19 produced around 2000 -- 20 A. '9 or '10. 21 Q. '9 or '10? 22 A. Yes. 23 Q. Orgasm Doctor, 2005? 24 A. Uh-huh. 25 MS. BAUMGARDNER: You have to answer</p>	<p>1 Ross 2 there are a lot of clips. I might have missed 3 one or two, but I can grant you access. 4 Q. I am going to show you another 5 document. It is another printout of your 6 website. I am going to hand first a copy to 7 counsel. 8 A. Oh, yes. 9 Q. I will give you your copy. 10 A. OK. 11 Q. Don't worry. 12 A. Sorry. 13 MS. BAUMGARDNER: We share. I can 14 share. 15 Q. I am handing a copy to the witness and 16 I have a copy that I am going to mark as RD-2. 17 (Exhibit RD-2 marked for 18 identification) 19 Q. This is a copy of the video portion of 20 your website, correct? 21 A. Correct. 22 Q. Can you take a look at -- it's printed 23 on the front and on the back. 24 A. Oh. 25 Q. Can you just take a look at it and let</p>

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<p>1 Ross</p> <p>2 me know if these are fair representation of all</p> <p>3 the videos for purchase in your website?</p> <p>4 A. Yes.</p> <p>5 Q. The answer is that this is all that</p> <p>6 you have available?</p> <p>7 A. Correct, yes.</p> <p>8 Q. Now, the first one on the left corner,</p> <p>9 Betty Dodson Bodysex Workshop?</p> <p>10 A. Yes.</p> <p>11 Q. That was produced in what year?</p> <p>12 A. 2011.</p> <p>13 Q. And Carlin and Liandra, part I and II?</p> <p>14 A. Same, 2011.</p> <p>15 Q. Carlin is your name, too, correct?</p> <p>16 A. That's me. Maybe that is why I didn't</p> <p>17 put on it the list. It might have been an</p> <p>18 embarrassment.</p> <p>19 Q. You are the performer in this video?</p> <p>20 A. Yes, I was a performer in that video.</p> <p>21 Q. You obviously know the other</p> <p>22 performer?</p> <p>23 A. Yes.</p> <p>24 Q. How old is the other performer?</p> <p>25 A. How old? She's 27.</p>	<p>1 Ross</p> <p>2 Toys, all of these, the next several, yes.</p> <p>3 Q. And are these also 2009?</p> <p>4 A. I think those are 2009 or '10.</p> <p>5 Q. Do you know the performer in How To</p> <p>6 Use a Menstrual Cup?</p> <p>7 A. Yes.</p> <p>8 Q. Have you provided us with the ID of</p> <p>9 this performer?</p> <p>10 A. I don't know. I mean --</p> <p>11 Q. You don't know?</p> <p>12 A. It should have been in the group, but</p> <p>13 I don't know offhand. I would have to look</p> <p>14 through it.</p> <p>15 Q. Let's flip the page?</p> <p>16 A. OK.</p> <p>17 Q. There is approximately eight or --</p> <p>18 twelve more videos here, right?</p> <p>19 A. Yes.</p> <p>20 Q. Sixteen if we count the other page?</p> <p>21 A. Yes.</p> <p>22 Q. Side Positions with Hitachi Magic</p> <p>23 Wand, and the videos that are here, some of them</p> <p>24 were produced between 2005 and 2009?</p> <p>25 A. I think these were produced in 2010,</p>
Page 34	Page 36
<p>1 Ross</p> <p>2 Q. 27. OK. Darcy Cures Her Cramps is</p> <p>3 another video?</p> <p>4 A. That's part of --</p> <p>5 Q. Orgasmic Women?</p> <p>6 A. Yes, that is an excerpt from Orgasmic</p> <p>7 Women.</p> <p>8 Q. How to Use a Menstrual Cup?</p> <p>9 A. Yes.</p> <p>10 Q. What year was that produced?</p> <p>11 A. That was shot by one of our users and</p> <p>12 that was, gosh -- maybe 2009.</p> <p>13 Q. So your users shoot videos and send</p> <p>14 them to you?</p> <p>15 A. Sometimes. This is a blogger. I'm</p> <p>16 sorry.</p> <p>17 Q. 2002, you said?</p> <p>18 A. 2009.</p> <p>19 Q. 2009. A Girl Masturbating with a</p> <p>20 Pearl Necklace and Glass Dildo?</p> <p>21 A. That is also a blogger, the same one.</p> <p>22 Q. What year was it produced?</p> <p>23 A. I think around the same time 2009.</p> <p>24 Q. Reverse Cowgirl?</p> <p>25 A. That's the Sex Positions with Sex</p>	<p>1 Ross</p> <p>2 2009, 2010.</p> <p>3 Q. All right. I can represent to you</p> <p>4 that I don't know if we have the IDs for these</p> <p>5 people.</p> <p>6 A. You have the IDs for this because this</p> <p>7 is me and Eric Wilkinson. I did this series.</p> <p>8 Q. Sex Positions?</p> <p>9 A. Yes.</p> <p>10 MS. BAUMGARDNER: That answer just</p> <p>11 elicited information subject to the protective</p> <p>12 order.</p> <p>13 THE WITNESS: Sorry.</p> <p>14 MS. BAUMGARDNER: I just need to note</p> <p>15 that for the record, Carlin.</p> <p>16 Q. I am going to ask for production of</p> <p>17 all the IDs and model releases for the people</p> <p>18 depicted in your video for the record. Because</p> <p>19 I believe we don't have some of theme.</p> <p>20 MS. BAUMGARDNER: For what time</p> <p>21 period, Hector.</p> <p>22 MR. BLADUELL: From 2005 on.</p> <p>23 MS. BAUMGARDNER: That is assuming you</p> <p>24 don't have them. We will look.</p> <p>25 MR. BLADUELL: I am sure I don't have</p>

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1 Ross  
2 a lot of them. But we'll discuss more IDs and  
3 releases shortly.  
4 Q. In these exhibits, the videos in  
5 Exhibit RD-2, you keep 2257 records for them?  
6 A. Correct.  
7 Q. For the videos that you produce, do  
8 you employ the same performers for all the  
9 videos?  
10 A. No.  
11 Q. You employ different performers?  
12 A. Correct.  
13 Q. So from video to video they can be  
14 different performers?  
15 A. Correct.  
16 Q. And from year to year they can be  
17 different performers?  
18 A. Correct.  
19 Q. I mean, is it your preference that  
20 they would be different performers?  
21 A. No.  
22 Q. Do you look for new performers for  
23 videos?  
24 A. No. We don't do that porn thing, no.  
25 Q. What do you mean "that porn thing"? I

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1 Ross  
2 don't understand.  
3 A. Well, in porn it's always about  
4 someone new, a fresh face. Not necessarily.  
5 Like women have been in multiple productions.  
6 Q. Have you watched a lot of porn would  
7 you say?  
8 MS. BAUMGARDNER: Objection.  
9 Q. Would you say that you have watched  
10 several porn movies?  
11 A. Of course, it's the Internet age.  
12 Q. You notice this trend --  
13 A. Yes.  
14 Q. -- of new people all the time,  
15 correct?  
16 A. Correct.  
17 Q. Do you notice a trend for young people  
18 in mainstream porn?  
19 A. You know, I don't know. I think now  
20 with online porn everything is very niche.  
21 Everything is kind of there. I mean, maybe you  
22 could make the argument for studio, you know,  
23 the big studios, but I don't know -- the most  
24 searched sex term in the United States is  
25 "MILF", so I think people kind of want to see

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1 Ross  
2 older women.  
3 Q. How do you know this?  
4 A. There was an article in the Daily Mail  
5 that was fascinating. It took by country what  
6 is the most popular sex keyword. Australia was  
7 "gay men," we were MILF, and then -- what was  
8 the UK? I forgot. Anyway --  
9 Q. Do you know the second most used?  
10 A. No. They just did the top.  
11 Q. Do you know if "teen porn" is one of  
12 the most searched?  
13 A. I don't know.  
14 Q. You don't know. Have you seen young  
15 people in the porn you have seen?  
16 A. I mean --  
17 Q. Let's say people that resemble 20  
18 years old?  
19 A. 20? Sure.  
20 Q. It is not uncommon to find people that  
21 are 20 years old or resemble 20 years old in  
22 porn videos, right?  
23 A. I guess. I mean, I don't know.  
24 Q. In the videos that you have seen?  
25 A. Yeah.

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1 Ross  
2 Q. Is it uncommon to find an 80-year-old  
3 in porn videos that you have seen?  
4 A. I don't think so. There's a whole  
5 genre of GILF films. I don't think that is  
6 uncommon.  
7 Q. In the mainstream porn industry, is it  
8 uncommon to find an 80-year-old?  
9 A. I would think so, yes.  
10 Q. Is it uncommon to find a 60-year-old?  
11 A. Yes.  
12 Q. A 50-year-old?  
13 A. I don't know. Nina Hartley is still  
14 in the game, but I think there are some  
15 50-year-olds that are still there.  
16 Q. It is more common to find 20-year-olds  
17 than 50-year-olds, correct?  
18 A. I would imagine.  
19 Q. From the videos that you have seen --  
20 A. From what I have seen. I am not an  
21 expert. From what I have seen, yes.  
22 Q. It is more common to find 20-year-olds  
23 than 50-year-olds?  
24 A. Correct.  
25 Q. How about 30-year-olds, and

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1 Ross  
2 20-year-olds? Are there more 20-year-olds,  
3 people in their 20s than people in their 30s?  
4 A. I will say that most of the porn stars  
5 I know, because we are in sex ed, we rub  
6 shoulders, most of them that I know are in their  
7 late 20s, early to mid 30s.  
8 Q. But in the videos that you have seen,  
9 can you say that most people, most of the  
10 performers resemble more of the 20s look than  
11 the 30s?  
12 A. I don't know. Because they always  
13 have such large breasts, and I don't know if I  
14 could distinguish between 20 and 30.  
15 Q. So it is hard to say the age range of  
16 the performers?  
17 A. Between 20 and 30, some 30-year-olds  
18 look really good.  
19 Q. When you mentioned the enhanced  
20 breasts, you mentioned that you think that makes  
21 women look older than they are?  
22 A. I think so, yes.  
23 Q. Now let's talk a little bit about your  
24 IDs. Do you need a break?  
25 A. No.

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1 Ross  
2 Q. Let's talk a little bit about your IDs  
3 and model releases.  
4 You are aware that we've requested  
5 production of all of the IDs that you keep and  
6 all of the model releases that you keep?  
7 A. Yes.  
8 Q. Do you know the number of  
9 identification cards that you have produced to  
10 us?  
11 A. I don't know the exact number.  
12 Q. Do you know an approximate number?  
13 A. 15.  
14 Q. 15?  
15 A. I don't know.  
16 Q. That is close enough?  
17 A. That was prepared by an intern, so I  
18 just gave her the files. I don't know. I am  
19 assuming everything --  
20 Q. Did you check the files before  
21 producing documents to us?  
22 A. I checked them and then I had her scan  
23 them and then I sent it over.  
24 Q. Before you sent them over, did you  
25 recheck them?

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1 Ross  
2 A. No.  
3 Q. So there could have been a couple  
4 missed?  
5 A. There could have been. That's why --  
6 mea culpa, there could have been a couple.  
7 Q. As long as you tell the truth, nothing  
8 bad is going to happen.  
9 A. Oh, good. I like this.  
10 Q. I have been able to count 18?  
11 A. So I wasn't so bad at guesstimating.  
12 Q. You weren't that bad?  
13 A. OK.  
14 Q. You keep IDs of more than 18  
15 performers, wouldn't you say so?  
16 A. Well, there are some multiple people,  
17 so, you know, like my license is on file, and  
18 I'm in one, two, three, four, five, six, seven,  
19 eight, you know what I mean, clips.  
20 Q. In that videos page that you have,  
21 RD-2 I believe, we established that there's like  
22 30 videos, correct?  
23 A. Yes. Also just looking at -- where is  
24 it? Yes. Celebrating Orgasm. I think that was  
25 before the statute, or I mean that's before my

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1 Ross  
2 time. I don't think that we had IDs. We had  
3 signed releases, but we didn't have any IDs for  
4 that.  
5 Q. To your best knowledge, you would say  
6 that you have in your possession more than 18  
7 IDs of performers?  
8 A. I don't know. I believe the number is  
9 close.  
10 Q. But you don't know?  
11 A. Not offhand.  
12 Q. OK.  
13 A. I don't want to nail down an answer  
14 because I already said I missed two clips.  
15 Q. Do you have hundreds of IDs for  
16 videos?  
17 A. No. We haven't produced hundreds of  
18 videos.  
19 Q. Well, I am going to request  
20 production --  
21 A. OK.  
22 Q. -- of all the IDs that you have for  
23 the videos appearing in RD-1, RD-2, the exhibits  
24 that you have not produced.  
25 A. OK.



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<p>1 Ross</p> <p>2 MS. BAUMGARDNER: I am going to object</p> <p>3 that, because I believe the production was</p> <p>4 subsequent to the court order, and the Court</p> <p>5 limited the period from January 1, 2005, to</p> <p>6 December 31, 2009.</p> <p>7 MR. BLADUELL: We can discuss the</p> <p>8 scope of the request later.</p> <p>9 MS. BAUMGARDNER: I am making it clear</p> <p>10 for the record because you are implying that our</p> <p>11 production was incomplete.</p> <p>12 THE WITNESS: That's right. It was '5</p> <p>13 to '9.</p> <p>14 MS. BAUMGARDNER: We were operating</p> <p>15 within those confines.</p> <p>16 MR. BLADUELL: OK.</p> <p>17 MS. BAUMGARDNER: You can make your</p> <p>18 request.</p> <p>19 MR. BLADUELL: Yes. I am making the</p> <p>20 request for the record. I am also making a</p> <p>21 request for the videos that we don't have access</p> <p>22 to. I think it is Manual Skills I and II, and</p> <p>23 there was another video.</p> <p>24 A. No, you have access. No?</p> <p>25 Q. I'm sorry.</p>	<p>1 Ross</p> <p>2 Q. It is all paper?</p> <p>3 A. Yes.</p> <p>4 Q. Were the records that you produced</p> <p>5 including people in your Genital Art Gallery?</p> <p>6 A. I believe so, yes.</p> <p>7 Q. How many --</p> <p>8 A. There would only be a few. What's</p> <p>9 left up now is what was before the -- I don't</p> <p>10 know what the cutoff is, remember in 2009 --</p> <p>11 they said just genitals before that it didn't</p> <p>12 need a release and ID.</p> <p>13 Q. How many pictures do you have in the</p> <p>14 Genital Art Gallery?</p> <p>15 A. Up now? A hundred, two hundred.</p> <p>16 Q. 200?</p> <p>17 A. I think.</p> <p>18 Q. You don't keep IDs of all of those</p> <p>19 people?</p> <p>20 MS. BAUMGARDNER: Objection.</p> <p>21 Go ahead and answer.</p> <p>22 A. OK. No, because the majority of that</p> <p>23 gallery was under Betty's old website, which was</p> <p>24 produced in the '90s, I think it was '88 it</p> <p>25 launched, and she started doing that. So they</p>
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<p>1 Ross</p> <p>2 A. Carlin &amp; Liandra that was probably a</p> <p>3 Freudian weird thing that happened in my head.</p> <p>4 Q. So I would like to see all the videos</p> <p>5 on my account.</p> <p>6 A. I will get them for you for the</p> <p>7 weekend.</p> <p>8 Q. Thank you.</p> <p>9 A. You have to laugh about these things.</p> <p>10 Q. Yes, no problem.</p> <p>11 Are there any documents showing how</p> <p>12 many performers you have employed other than the</p> <p>13 IDs?</p> <p>14 A. No.</p> <p>15 Q. You don't make a summary?</p> <p>16 A. No.</p> <p>17 Q. Would the model releases show how many</p> <p>18 performers you have?</p> <p>19 A. Well, yes.</p> <p>20 Q. OK. So there are other records other</p> <p>21 than the IDs? There are the model releases?</p> <p>22 A. Yes.</p> <p>23 Q. Do you keep a database of the names of</p> <p>24 the people online?</p> <p>25 A. No.</p>	<p>1 Ross</p> <p>2 were before the new regs on the statute. So</p> <p>3 they wouldn't -- if it was just a genital, it</p> <p>4 didn't have to have the signed release. So</p> <p>5 there was no process where she did that. So I</p> <p>6 kept up what was all the old ones.</p> <p>7 Q. But since 2009 you have been</p> <p>8 requesting IDs of the people?</p> <p>9 A. Yes.</p> <p>10 Q. So you have some IDs?</p> <p>11 A. We have like two.</p> <p>12 Q. You have two?</p> <p>13 A. I think we have two.</p> <p>14 Q. Can you identify the initials of the</p> <p>15 people that you know that you keep IDs in the</p> <p>16 Genital Gallery?</p> <p>17 A. I don't know offhand. I know by the</p> <p>18 image of their genitals, but I don't know their</p> <p>19 names.</p> <p>20 Q. I am going request production of the</p> <p>21 initials and the dates of birth so we can verify</p> <p>22 that we have the records for the record.</p> <p>23 A. OK.</p> <p>24 Q. Now, you don't have records for a lot</p> <p>25 of the people in the Genital Art Gallery?</p>

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1 Ross  
2 A. Correct.  
3 Q. But you still post those pictures up,  
4 correct?  
5 A. Correct.  
6 Q. How do you know that there's no minor  
7 that is depicted there?  
8 A. Well, we asked them to send in a sex  
9 essay about their sex life and their sexual  
10 development.  
11 So they are writing about being  
12 married and having children and pregnancy and  
13 sex postpregnancy, and, you know, some of them  
14 have graying pubic hair. I am not an expert in  
15 looking at someone's genitals, I know, and  
16 saying what the age is, but there are times I  
17 think there are clearly of majority.  
18 Q. There are sometimes that it's  
19 difficult to tell?  
20 A. Yes. Over the years Betty has had  
21 people send in things that she didn't put up.  
22 Q. So you rely on their essays to  
23 determine their age and insure -- do you try to  
24 insure that there are no minors in this --  
25 A. Our website is about women. We're

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1 Ross  
2 feminists. We are not about exploiting young  
3 girls. Absolutely not. So, yes, it could go  
4 against my brand. I would never want a minor in  
5 there, ever.  
6 Q. But you rely on what they write to  
7 know if they are over 18, correct?  
8 A. And the look of their genitals.  
9 Q. Is it possible that they could lie.  
10 Is it possible that someone could lie about  
11 being 18?  
12 A. I don't think so. I don't think any  
13 young child wants to take an image of their  
14 genitals and upload it to a site for no money.  
15 There are so many sites where you can upload  
16 images and make money off them.  
17 Q. It is just possible that someone could  
18 lie?  
19 A. Everything is possible, yes.  
20 Q. Right?  
21 A. Yes.  
22 Q. Are you aware of instances where  
23 minors have tried to lie about their age to get  
24 into clubs?  
25 A. Of course. But don't bouncers rely --

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1 Ross  
2 if the person looks 25 or above, you don't have  
3 to ask for a license. Like I was a bartender in  
4 college, and they would say if they looked under  
5 25, so you are making that judgment.  
6 Q. The ID would show if someone is under  
7 18 or not?  
8 A. Of course.  
9 Q. A government-issued ID would be a good  
10 indication, correct?  
11 A. Correct.  
12 Q. That ID would help you to be more  
13 sure, right, about someone's age?  
14 A. Correct.  
15 Q. I'm going to show you another  
16 document.  
17 MR. BLADUELL: This is going to be  
18 RD-3 I believe.  
19 It is a document that you are familiar  
20 with hopefully. It is responses to first and  
21 second set of interrogatories.  
22 A. OK.  
23 (Exhibit RD-3 was marked for  
24 identification)  
25 MS. BAUMGARDNER: First and second

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1 Ross  
2 set?  
3 MR. BLADUELL: First set. I am going  
4 to give a copy to counsel for the record. It's  
5 going to be interrogatory No. 9.  
6 Q. Actually, can I switch the copy.  
7 A. Sure.  
8 Q. I marked that one, and I want to keep  
9 it for the record. I am going to give you  
10 another one. It's interrogatory No. 9.  
11 A. Uh-huh.  
12 MS. BAUMGARDNER: You have to answer  
13 verbally, Carlin.  
14 THE WITNESS: Yes, I'm sorry. I am  
15 such an "uh-huh" person.  
16 Q. You have seen this document before,  
17 correct?  
18 A. Yes.  
19 Q. This document asks you to identify for  
20 each such age group whether the total number of  
21 depictions is more than five, greater than ten,  
22 greater than twenty, greater than fifty, greater  
23 than one hundred, greater than one thousand.  
24 A. Uh-huh.  
25 Q. If you flip the page, on page 6, we

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1 Ross  
2 have your answers.  
3 A. Yes.  
4 Q. You said, "We are unable to provide  
5 data for many images produced throughout the  
6 years," correct?  
7 A. Yes.  
8 Q. Why do you say you are unable to  
9 provide data for many images throughout the  
10 years?  
11 A. I believe that is the Genital Art  
12 Gallery. At that time it wasn't a legal  
13 requirement to request someone's ID so we just  
14 didn't collect it.  
15 Q. Do you believe that the images in the  
16 Genital Art Gallery fall under the statute?  
17 A. No, I don't.  
18 Q. You don't believe so?  
19 A. No.  
20 Q. Why don't you believe so?  
21 A. Because as a now sex educator I can  
22 tell you we've traveled the world, from Cuba to  
23 Scandinavia, and the number-one issue people  
24 have that keeps them from having good sex, which  
25 is about intimacy and relationships, is genital

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1 Ross  
2 shame.  
3 And I don't want to censor porn, but  
4 the majority of vulvas in pornography have been  
5 surgically enhanced. They clip the inner lips,  
6 they bleach the vagina, they bleach the asshole.  
7 So it is to maybe look like a little girl. I  
8 don't know what their intent is.  
9 People look at those images, and if  
10 they don't see something that looks like them  
11 they think they are deformed.  
12 The same thing for men. They are  
13 choosing men that are very large, most of them  
14 are circumcised. So we have a lot of people  
15 writing in saying, I can't have sex with someone  
16 because I think there's something wrong with me,  
17 which is why Betty started the Genital Art  
18 Gallery, so you can see a real image of a real  
19 person, which is why anonymity is important,  
20 because real people with day jobs and wives and  
21 husbands and kids don't want their license  
22 floating around and someone can find out that  
23 they've done something like that.  
24 Q. You said in your answer right now that  
25 in mainstream porn women sometimes undergo

Page 55

1 Ross  
2 certain procedures?  
3 A. Yes.  
4 Q. To look younger?  
5 A. I don't know. The ideal look of a  
6 vulva, a clamshell, which means if there's any  
7 little dangling inner lips they cut them off,  
8 and now labioplasty is the number one plastic  
9 surgery procedure requested by women in the  
10 United States, and now it's going across to  
11 Europe. And then they bleach everything so that  
12 it's pink. The whole point is no brown. I  
13 don't know why they do it --  
14 Q. But does that make them look younger  
15 than they really are? Is that the purpose?  
16 A. I don't know if that's the purpose.  
17 Q. Well --  
18 A. There is a range of looks of vulvas,  
19 different styles.  
20 Q. I think you said that the purpose was  
21 to make them look like a little girl.  
22 A. I don't know what the purpose is. I  
23 can't really speak for them.  
24 Q. Didn't you say that, that the purpose  
25 was to make them look like a little girl?

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1 Ross  
2 A. I said I don't know after that. I  
3 don't know why they do it. You could make the  
4 argument so that it's so that they look younger.  
5 You could make that argument.  
6 Q. If it is a hundred percent successful  
7 surgery, that would make them look young -- and  
8 if it is to look for them to look like a little  
9 girl, then it would make them look younger,  
10 correct?  
11 A. I guess. You could make the argument,  
12 that removing the pubic hair and clipping the  
13 inner lips and dyeing everything pink, bleaching  
14 everything pink you could make the argument; or  
15 it could be a style, because some women are born  
16 with pink and there are no inner lips, some  
17 women have that style but it's probably, from  
18 what we gather, like 10, 15 percent.  
19 Q. What other purpose would there be if  
20 they're doing this procedure than to resemble a  
21 little girl and to look younger, what other  
22 purpose?  
23 A. That's a style. You know, why do we  
24 like, you know, the waif look? Why do we like  
25 Twiggy? It could be a style.

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1 Ross  
2 Q. The style to look younger?  
3 A. I don't know what their intent is  
4 because we don't do that. So it could either be  
5 looking younger or it could be like a style.  
6 Q. What kind of style would that be?  
7 A. The clamshell. That's what it's  
8 called, the clamshell style.  
9 Q. This clamshell style, what is the  
10 style? Can you describe what it is?  
11 A. A style. So there is a range of  
12 genitals and how they look. The majority of  
13 women have dangling inner lips, and the outside  
14 of them are a little brown. But some women it's  
15 completely closed and it's pinker. Like  
16 anything in life, there is a variation in the  
17 appearance of the body.  
18 Q. Do young girls have this clamshell  
19 look, resemble the clamshell look?  
20 A. Oh, I know what you're getting at.  
21 No. It is a style. Some little girls have  
22 dangling inner lips from the get-go. That's the  
23 way it is.  
24 Q. Do you know if most little girls have  
25 this clamshell style look?

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1 Ross  
2 A. That I don't know.  
3 Q. You have not seen a lot of --  
4 A. No.  
5 Q. But you do have some kind of knowledge  
6 that this clamshell look is to make, it could be  
7 to make people look like little girls because  
8 you just said that, right? You didn't make that  
9 up, correct?  
10 A. No.  
11 Q. You didn't lie about it, right?  
12 A. The purpose could be. I mean, you  
13 should depose Hugh Hefner and ask him, and some  
14 of the other --  
15 Q. Maybe I will.  
16 A. -- multimillion dollar pornographers  
17 because maybe they could shed light on it.  
18 MS. BAUMGARDNER: Or the women.  
19 Q. Let me show you a document.  
20 A. Sure.  
21 MS. BAUMGARDNER: Are we done with  
22 this one?  
23 MR. BLADUELL: No. We'll hold it.  
24 MS. BAUMGARDNER: Can I have a copy?  
25 MR. BLADUELL: I'm sorry. I'm handing

Page 59

1 Ross  
2 the witness a document called the Genital Art  
3 Gallery artist statement. I'm handing a copy to  
4 counsel. And I'm going to mark this as Exhibit  
5 RD-4.  
6 (Exhibit RD-4 was marked for  
7 identification)  
8 THE WITNESS: The first time I heard  
9 about labioplasty was on Howard Stern. He would  
10 have the porn stars come on and they would talk  
11 about clipping the inner lips and the procedures  
12 they would undergo. I guess this was in the  
13 '80s. And I had never heard of that, and now  
14 it's the number one procedure women request.  
15 Q. Do they say why they do this?  
16 A. I guess it must be the most pleasing  
17 aesthetic. Why do supermodels starve  
18 themselves? It must be what the industry wants.  
19 Q. It would help them get more business?  
20 A. Yes, they would make more money.  
21 Q. Now, if we look at the third paragraph  
22 in this RD-4, the Genital Art Gallery artist  
23 statement. It says, "Today many women in the  
24 adult industry have undergone surgery for  
25 removal of their extended inner lips to achieve

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1 Ross  
2 what one surgeon calls the clamshell look,  
3 reminiscent of a prepubescent girl."  
4 A. Yes.  
5 Q. "Other women began to want a similar  
6 work."  
7 Do you think that statement is  
8 accurate?  
9 A. This is Betty's statement, and, yes,  
10 it's accurate. Betty can say. She's the  
11 oracle.  
12 Q. This is a similar statement that you  
13 just made, correct?  
14 A. Well, no. My statement was about why  
15 people in the adult industry -- and I can't  
16 speak for them, so that's why I'm saying I don't  
17 know what the intent is, but it would seem that  
18 it was because you would look younger.  
19 Q. A prepubescent girl is how old?  
20 A. I don't know. Just probably --  
21 Q. 12, 13?  
22 A. I would imagine, prepubescent.  
23 Q. There are no 10 or 13-year-olds in the  
24 porn industry that you know of?  
25 A. No, not that I know of.

Page 61

1 Ross  
2 Q. It would be a crime, right?  
3 A. Yes.  
4 Q. It would be child pornography?  
5 A. Yes.  
6 Q. So most of the women in the adult  
7 industry are over 18, correct?  
8 A. Correct.  
9 MS. BAUMGARDNER: Objection.  
10 Q. If you know?  
11 A. Well, I would imagine, since you  
12 haven't busted them, that they are.  
13 Q. The purpose that they undergo this  
14 procedure is they could look like a prepubescent  
15 girl that is around 13 or 14, correct?  
16 MS. BAUMGARDNER: Objection.  
17 A. I assume, yes.  
18 Q. Yes?  
19 A. Yes.  
20 Q. Thank you. Let's continue on  
21 interrogatory No. 9. It asks about the  
22 breakdown of ages.  
23 A. You see we have some 62-year-olds.  
24 Q. Well, let's go back to page 5.  
25 A. OK.

Page 62

1 Ross  
2 Q. Would you say that the number of  
3 people 18 to 25 in your depictions and images is  
4 greater than 50?  
5 A. No.  
6 Q. It is greater than 20?  
7 A. No.  
8 Q. It's greater than 10?  
9 A. No.  
10 Q. Greater than 5?  
11 A. Yes.  
12 Q. And 26 to 35, it would be greater than  
13 20?  
14 A. No.  
15 Q. Greater than 10?  
16 A. Yes.  
17 Q. 36 and 45, greater than 5?  
18 A. Yes.  
19 Q. Greater than 50?  
20 A. No.  
21 Q. Greater than 20?  
22 A. No.  
23 Q. I mean, you said you don't have that  
24 many. You don't have more than 20 performers?  
25 A. That's what I am saying, so 20.

Page 63

1 Ross  
2 Q. So all of these categories would be  
3 greater than 5?  
4 A. Probably greater than 5, yes.  
5 MS. BAUMGARDNER: I just want to  
6 object.  
7 MR. BLADUELL: I'm sorry. She has no  
8 question. You cannot interrupt. If you have an  
9 objection note it for the record. Do not coach  
10 the witness.  
11 MS. BAUMGARDNER: I am not. I am  
12 pointing out that the question asks for the  
13 number of depictions, not the number of  
14 performers.  
15 MR. BLADUELL: OK.  
16 THE WITNESS: Oh.  
17 MS. BAUMGARDNER: I think your  
18 question was misleading.  
19 Q. Does that change your answer?  
20 A. Let me think about it. So each  
21 depiction is one. Now I'm confused.  
22 Q. Would it still be fair to say that it  
23 would be greater than 5 for all categories?  
24 A. Yes.  
25 Q. Accurate to say that?

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1 Ross  
2 A. Yes.  
3 Q. Now, if we flip the page, page 6.  
4 Images on the Genital Art Gallery were  
5 submitted by people ranging from 20 years of age  
6 to 83 years of age?  
7 A. Correct.  
8 Q. Do you see that?  
9 A. Yes.  
10 Q. How do you know that they range from  
11 20 to 83?  
12 A. When they make their submission we  
13 have them include their age. We don't publish  
14 that. Since it's not published, I feel that  
15 they probably tell the truth.  
16 Q. So this is based on the model  
17 releases, on the releases, right?  
18 A. Yes.  
19 Q. It's not based on IDs that you have?  
20 A. No.  
21 Q. You said that you have a hundred of  
22 these releases?  
23 MS. BAUMGARDNER: Objection.  
24 Go ahead.  
25 A. No licenses or releases were used



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<p>1 Ross</p> <p>2 a lot of time doing this because we really focus</p> <p>3 on women, so it's never an issue. But how I</p> <p>4 aged someone when I was tending bar through</p> <p>5 college and law school, yes, I believe I knew</p> <p>6 when someone was 25. 18 to 20 is harder to</p> <p>7 tell.</p> <p>8 Q. That is all I am asking.</p> <p>9 A. Yes.</p> <p>10 Q. Thank you.</p> <p>11 You don't have any formal education in</p> <p>12 determining a person's age --</p> <p>13 A. No.</p> <p>14 Q. -- by facial observation?</p> <p>15 A. No.</p> <p>16 Q. So you agree with me it is difficult</p> <p>17 to say a person's exact age with a hundred</p> <p>18 percent confidence only by visual inspection?</p> <p>19 A. Correct, yes.</p> <p>20 Q. It's difficult by visual observation</p> <p>21 of an image to say someone's exact age?</p> <p>22 A. Correct.</p> <p>23 Q. Or even if someone is 25?</p> <p>24 MS. BAUMGARDNER: Objection.</p> <p>25 A. I think you can within a five-year</p>	<p>1 Ross</p> <p>2 Q. Do you need a break?</p> <p>3 A. No, not right now.</p> <p>4 Q. I'm going to show you an image, and</p> <p>5 I'm going to label it as RD-6.</p> <p>6 A. Are you testing me now.</p> <p>7 Q. I get to ask the questions.</p> <p>8 A. Oh, no.</p> <p>9 (Exhibit RD-6 was marked for</p> <p>10 identification)</p> <p>11 MR. BLADUELL: For the record, I have</p> <p>12 provided an image RD-6 to the witness. Have you</p> <p>13 seen this image before?</p> <p>14 A. I have not.</p> <p>15 Q. Can you tell if this person is clearly</p> <p>16 mature?</p> <p>17 A. She looks mature, so I guess yes.</p> <p>18 Q. In your view is this person clearly</p> <p>19 mature?</p> <p>20 A. It don't know the. Breast implants</p> <p>21 throw me off. Yes, she looks like a woman to</p> <p>22 me, yes.</p> <p>23 Q. That is not my question. My question</p> <p>24 is, can you tell with a hundred percent</p> <p>25 confidence that this person is clearly mature?</p>
Page 78	Page 80
<p>1 Ross</p> <p>2 span kind of guess what someone's age is by</p> <p>3 looking at a visual -- I mean, you can look at</p> <p>4 someone and say if they're 40. You can look at</p> <p>5 someone and say if you think they're 30, if</p> <p>6 they're 20. I think that's clear.</p> <p>7 Q. But an exact age is impossible?</p> <p>8 A. Yes, of course.</p> <p>9 Q. Is it impossible?</p> <p>10 A. I wouldn't say it's impossible there</p> <p>11 might be someone who can do it. I can't.</p> <p>12 Q. Would having an ID of the person that</p> <p>13 you have a depiction of increase your confidence</p> <p>14 in that person's age?</p> <p>15 A. Yes and no, because we get a lot of</p> <p>16 international submissions, so I don't know how</p> <p>17 to know whether or not an international license</p> <p>18 or passport is forged or not, I mean, really.</p> <p>19 Q. I am going to show you other documents</p> <p>20 so bear with me for a second. You can have a</p> <p>21 sip of water.</p> <p>22 THE WITNESS: What time is it?</p> <p>23 MS. WYER: It's 10:15.</p> <p>24 THE WITNESS: OK. I just want to give</p> <p>25 Betty a wakeup call.</p>	<p>1 Ross</p> <p>2 MS. BAUMGARDNER: Objection.</p> <p>3 A. Yes, I think she's mature.</p> <p>4 Q. By mature, you mean what age?</p> <p>5 A. You want me to give her an age now?</p> <p>6 Q. If you can.</p> <p>7 MS. BAUMGARDNER: Objection. I think</p> <p>8 this is completely unfair. But go ahead.</p> <p>9 A. I don't know. I would put her in the</p> <p>10 18-to-24 bracket. You never know. People of</p> <p>11 color they can be much older and look young.</p> <p>12 Are you going to tell me her age now?</p> <p>13 Q. I get to ask the questions.</p> <p>14 A. OK.</p> <p>15 Q. Exact age, can you tell with a hundred</p> <p>16 percent confidence how old exactly this person</p> <p>17 is?</p> <p>18 A. No. I thought you were going to show</p> <p>19 me her vulva.</p> <p>20 Q. Maybe.</p> <p>21 A. I am just teasing you. I'm sorry.</p> <p>22 MS. BAUMGARDNER: Hector, I would like</p> <p>23 to take a break when it's convenient.</p> <p>24 MR. BLADUELL: OK. Thank you.</p> <p>25 Q. I am going to show you another</p>

1	Ross
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3	
4	WITNESS: CARLIN ROSS
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1 Ross  
 2  
 3 CERTIFICATE  
 4  
 5 STATE OF NEW YORK )  
 6 : ss  
 7 COUNTY OF NEW YORK)  
 8  
 9 I, Samuel Mauro, Jr., a Registered  
 10 Merit Reporter and Notary Public within and for  
 11 the State of New York, do hereby certify:  
 12 That CARLIN ROSS, the witness whose  
 13 deposition is hereinbefore set forth, was duly  
 14 sworn by me and that such deposition is a true  
 15 record of the testimony given by such witness.  
 16 I further certify that I am not  
 17 related to any of the parties to this action by  
 18 blood or marriage and that I am in no way  
 19 interested in the outcome of this matter.  
 20 In witness whereof, I have hereunto  
 21 set my hand this \_\_\_\_\_ day of  
 22 \_\_\_\_\_ 2\_\_\_\_\_.  
 23  
 24  
 25 SAMUEL G. MAURO, RMR

**In The Matter Of:**

*Free Speech Coalition Inc., et al. v.  
The Honorable Eric H. Holder, Jr., Attorney General*

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*Steven David Steinberg  
April 19, 2013*

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*Behmke Reporting and Video Services, Inc.  
160 Spear Street, Suite 300  
San Francisco, California 94105  
(415) 597-5600*

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<div>Page 21</div> <div> <p>1 because I really like film, and I like -- I'm just stuck</p> <p>2 in my ways.</p> <p>3 <b>Q. Do you develop the film yourself?</b></p> <p>4 A. No. I have a lab that does my -- all of my</p> <p>5 developing and printing.</p> <p>6 <b>Q. And you only take black and white?</b></p> <p>7 A. I take a little bit of color, but -- and Cupido</p> <p>8 encourages me. They want more color, but I mostly do</p> <p>9 black and white. I think it's more artful. And,</p> <p>10 especially in the realm of sexual photography, I'm</p> <p>11 trying to take my photography out of the mindset that</p> <p>12 people are used to with sexual photography, which is</p> <p>13 related to commercial pornography, which is almost all</p> <p>14 in color. So being in black and white helps put me in a</p> <p>15 different category.</p> <p>16 <b>Q. You mentioned your very first photo shoot ended</b></p> <p>17 <b>up being in Cupido?</b></p> <p>18 A. Yes.</p> <p>19 <b>Q. So did you -- did your photography become</b></p> <p>20 <b>commercial, something you did for money right away,</b></p> <p>21 <b>then?</b></p> <p>22 A. Yeah, it did. It was quite surprising.</p> <p>23 Barbara Nitke -- not to take up your time, but Barbara</p> <p>24 Nitke, when I work, I have always admired. I showed her</p> <p>25 some of my initial photographs. And she said, "David,</p> </div>	<div>Page 23</div> <div> <p>1 to do. I just say, "Try to be natural and be yourself.</p> <p>2 I'm just trying to document who you are.</p> <p>3 Also, I've done a number of specialties,</p> <p>4 including older people, people who are not</p> <p>5 traditionally, quote, "beautiful." Heavy people. I'm</p> <p>6 doing a whole series of people with disabilities who's</p> <p>7 sexuality nobody takes seriously. Because one of the</p> <p>8 messages in the work that I'm trying to do is that you</p> <p>9 don't have to be young and thin and glamorous to be</p> <p>10 sexually attractive and wonderful sexually.</p> <p>11 <b>Q. When you take these photographs, where do</b></p> <p>12 <b>you -- where does it happen?</b></p> <p>13 A. Almost always I photograph people where they</p> <p>14 live, because I think that's where people are most</p> <p>15 comfortable. I don't work in studio. I have debates</p> <p>16 with other photographers about that. But I'm convinced</p> <p>17 that, at least for the photography that I'm interested</p> <p>18 in, which, as I say, is getting people to be honest and</p> <p>19 natural and genuine. The best place to have that happen</p> <p>20 is when they're at home.</p> <p>21 <b>Q. Do you use lighting, specialized lighting?</b></p> <p>22 A. Yeah, I have basic lights, two tripods with hot</p> <p>23 lights and umbrellas. And I move my lights around,</p> <p>24 again, because I don't pose people. I don't say, "Be</p> <p>25 here. Do this." Sometimes people will say, "Well, what</p> </div>
<div>Page 22</div> <div> <p>1 you have to take this seriously. How often do you come</p> <p>2 on something that's useful that you do well, that's fun</p> <p>3 to do, and that you can make money from?"</p> <p>4 So at that point it was just kind of a lark for</p> <p>5 me. But at that point I really started saying, "Oh, I</p> <p>6 can do something significant with this. And, plus, all</p> <p>7 of a sudden everybody I knew wanted to be photographed.</p> <p>8 <b>Q. Since the time you started as a photographer,</b></p> <p>9 <b>what has -- how has your career progressed?</b></p> <p>10 A. Well, initially, it was for Cupido. Initially,</p> <p>11 it was people I knew. It's expanded. People have seen</p> <p>12 my work. People have asked to reproduce my work. I now</p> <p>13 get requests from strangers who want me to photograph</p> <p>14 them. I've been in lots of art shows. I've won awards.</p> <p>15 I was declared erotic photographer of the year in 2010,</p> <p>16 I think it was, by the Leydig Trust in London. I was</p> <p>17 declared one of the first of the initial five masters,</p> <p>18 so-called masters of erotic art by the Seattle Erotic</p> <p>19 Art Festival last year.</p> <p>20 And I have a following now. I think people</p> <p>21 appreciate sexual photography that's genuine, that you</p> <p>22 would look at them and say, "Oh, these are regular</p> <p>23 people. This could be me in this photograph." When I</p> <p>24 show my work, that's mostly what people respond to,</p> <p>25 because I don't pose my models. I don't tell them what</p> </div>	<div>Page 24</div> <div> <p>1 do you want us to do?" And I say, "Well, it's up to</p> <p>2 you."</p> <p>3 I mean, the whole thing that I do is to try to</p> <p>4 make people feel comfortable with me, comfortable with</p> <p>5 the unnatural situation of being photographed while</p> <p>6 being sexual, so that hopefully they can be sexual in</p> <p>7 more than a superficial way. And then I get the</p> <p>8 photographs that I think really had something to say</p> <p>9 about being sexual people.</p> <p>10 <b>Q. So at this point -- I mean, from the time you</b></p> <p>11 <b>became a photographer, did you make your living from</b></p> <p>12 <b>doing that?</b></p> <p>13 A. Partially, I do. It's not the only thing I do</p> <p>14 for money, but yeah. Yeah, pretty much from the time I</p> <p>15 started I started earning income from it.</p> <p>16 <b>Q. What are the other components of your income?</b></p> <p>17 A. I have a business that I've owned for 30 years,</p> <p>18 selling herbs and teas and spices to health food stores</p> <p>19 in Santa Cruz. I mean, I make some money from my</p> <p>20 writing. And at this point -- I mean, I'm 68 years</p> <p>21 old -- a fair amount of my income comes from investments</p> <p>22 that I get dividends from.</p> <p>23 <b>Q. Between --</b></p> <p>24 A. Oh, and, sorry, Cupido, where I get commissions</p> <p>25 on the work of other people's photography that I sell to</p> </div>

<div>Page 25</div> <div> <p>1 them or that I broker to them. And, of course, when</p> <p>2 they use my photographs, they pay me for them. So in</p> <p>3 addition to my photography, I'm also -- there's like the</p> <p>4 agenting income that I have.</p> <p>5 <b>Q. So "Photo Sex" was published in 2003. Do</b></p> <p>6 <b>you -- were the photographs included in that book</b></p> <p>7 <b>created at around the same time period that the book was</b></p> <p>8 <b>published?</b></p> <p>9 A. No, some of them were quite earlier. I don't</p> <p>10 know when all the photographs were created, but I know</p> <p>11 that some of them were definitely from the '80s and '90s</p> <p>12 and so on. Some probably -- actually, some from earlier</p> <p>13 than that, '60s and '70s. Some of them were, you know,</p> <p>14 right before 2003, as well.</p> <p>15 <b>Q. And then your next -- your book "Divas of San</b></p> <p>16 <b>Francisco," was that a specific project that you</b></p> <p>17 <b>undertook during a certain time period?</b></p> <p>18 A. Uh-huh, yes.</p> <p>19 <b>Q. When was that?</b></p> <p>20 A. Let's see. I think the first -- Divas of San</p> <p>21 Francisco is a name of a night club. It's a club in San</p> <p>22 Francisco, a transsexual club. It's the largest</p> <p>23 transsexual club in the country. I've been a fan of the</p> <p>24 club and hanging out at the club for many years. And,</p> <p>25 initially, Spectator Magazine wanted me to take some</p> </div>	<div>Page 27</div> <div> <p>1 years all mixed up. And at that point I decided if I</p> <p>2 was going to have a show at a major gallery, I wanted to</p> <p>3 have a book to go with the show, and I put the book</p> <p>4 together.</p> <p>5 <b>Q. Does 2008 sound like the right year for that?</b></p> <p>6 A. It's plausible. Sorry I don't have all the</p> <p>7 chronology in front of me.</p> <p>8 <b>MS. BAUMGARDNER:</b> That's okay. Ms. Wyer will</p> <p>9 tell you you don't have to guess.</p> <p>10 <b>THE WITNESS:</b> I'm sure you can get that from</p> <p>11 all of that right there.</p> <p>12 This is very different. This is nonsexual</p> <p>13 photography. This is just photographs of women. There</p> <p>14 are, I think, 59 photographs in the book, of which only</p> <p>15 four are full-body nudes where, for example, you see</p> <p>16 people's genitals. But that's not the point of the book</p> <p>17 at all. The point of the book was to do portraits and</p> <p>18 photographs that give the viewer more than a superficial</p> <p>19 sense of who this person is that they're looking at.</p> <p>20 <b>BY MS. WYER:</b></p> <p>21 <b>Q. Did that -- how many years were you engaged in</b></p> <p>22 <b>that project?</b></p> <p>23 A. I think the first pictures that I took of</p> <p>24 people from Divas was 1993, and then it was 2008. So</p> <p>25 that's 15 years, and I still do photography there. I</p> </div>
<div>Page 26</div> <div> <p>1 photos there when Divas started having topless shows two</p> <p>2 nights a week. So I photographed some of the dancers</p> <p>3 there. But as I got to know them, I also got interested</p> <p>4 in photographing them when they weren't performing. So</p> <p>5 I ended up doing lots of, essentially, portrait</p> <p>6 photography of what I think is an extraordinary group of</p> <p>7 women.</p> <p>8 And then at some point I had a -- let's see. I</p> <p>9 guess the first show of those photographs that I had was</p> <p>10 at the Center for Sex &amp; Culture in San Francisco. I'm</p> <p>11 sorry, the first show I had was at a meeting of</p> <p>12 sexologists at the Society for the scientific study of</p> <p>13 sexuality, which is a professional organization I've</p> <p>14 been a member of for many years. And they expressed</p> <p>15 interest in these photographs, and I had a show of those</p> <p>16 photographs at one of their conventions and then a show</p> <p>17 of the photographs at the Center for Sex &amp; Culture.</p> <p>18 <b>Q. Do you remember when those shows were?</b></p> <p>19 A. No, I don't. It should be on the list that we</p> <p>20 submitted to you, but I don't remember.</p> <p>21 And then I had a well-respected fine art</p> <p>22 photography gallery in Seattle, called Benham Gallery,</p> <p>23 B-E-N-H-A-M, who expressed interest in the photos. And</p> <p>24 I had a big show up there. It would be right at the</p> <p>25 same time that the book was published. I really get the</p> </div>	<div>Page 28</div> <div> <p>1 took photos there last week. I do photographs at the</p> <p>2 club. I do photographs of some of the women at home.</p> <p>3 Sometimes -- I live two blocks from the club. Sometimes</p> <p>4 people come back to my place and we do photographs</p> <p>5 there.</p> <p>6 <b>Q. So that's not something that has stopped?</b></p> <p>7 <b>You're still engaged in that?</b></p> <p>8 A. I'm still engaged in, yes, doing the</p> <p>9 photographs. I haven't published any -- Cupido</p> <p>10 occasionally publishes one or two of those photographs.</p> <p>11 I have not published any of those photographs since</p> <p>12 Divas was published. And since I've been talking with</p> <p>13 Lorraine -- I mean, people ask me when am I going to do</p> <p>14 a second book. But at this point I don't think I could</p> <p>15 do a second book because I think I would be required to</p> <p>16 add 2257 information for all the people in the book,</p> <p>17 even though these are nonsexual photographs and I don't</p> <p>18 have that information.</p> <p>19 <b>MS. WYER:</b> I'd like to mark this as Steinberg</p> <p>20 2.</p> <p>21 (Whereupon, Defendant's Exhibit No. 2 was</p> <p>22 marked for identification.)</p> <p>23 <b>BY MS. WYER:</b></p> <p>24 <b>Q. Do you recognize this?</b></p> <p>25 A. Yeah, it looks like my LinkedIn profile. My</p> </div>



<div>Page 33</div> <div> <p>1 that's essentially complete.</p> <p>2 <b>Q. And in terms of your photographic work, you</b></p> <p>3 <b>mentioned the adult couples having sex, photography that</b></p> <p>4 <b>you do. And you've mentioned the photographs of -- is</b></p> <p>5 <b>it of performers at the Divas of -- did you say Divas of</b></p> <p>6 <b>San Francisco was the name of a club?</b></p> <p>7 A. Yes.</p> <p>8 <b>Q. And the photographs that you take are of</b></p> <p>9 <b>performers at that club?</b></p> <p>10 A. Not entirely. Sometimes it's performers.</p> <p>11 Sometimes it's bartenders. Sometimes it's just people</p> <p>12 who are patrons of the club. It started with the</p> <p>13 performers but it has expanded. I would say at this</p> <p>14 point most of the people I photograph are nonperformers.</p> <p>15 <b>Q. And other than those two topics, does your</b></p> <p>16 <b>photography encompass any other subjects?</b></p> <p>17 A. In the last, what is it now, three years I've</p> <p>18 been doing still photography at photo shoots at</p> <p>19 kink.com, which is a producer of BDSM porn films in San</p> <p>20 Francisco. They run a number of websites. One of their</p> <p>21 websites is called "Public Disgrace." And, initially,</p> <p>22 from an article that I wrote for Cupido about kink.com,</p> <p>23 I got connected with the people at Public Disgrace. And</p> <p>24 I've been doing a project of taking still photographs at</p> <p>25 some of their shoots. I've shown some of those</p> </div>	<div>Page 35</div> <div> <p>1 <b>you know what that means in the context of the statute</b></p> <p>2 <b>at issue in this case, which is 18 U.S.C. 2257?</b></p> <p>3 A. I don't believe that anybody knows what that</p> <p>4 means in terms of the statute. I don't think the</p> <p>5 statute is the least bit clear about that. And it's one</p> <p>6 of the problems with the statute, is that nobody can</p> <p>7 figure out what the hell it's talking about.</p> <p>8 <b>Q. But you're familiar with that phrase as</b></p> <p>9 <b>something --</b></p> <p>10 A. Yes.</p> <p>11 <b>Q. -- in the statute?</b></p> <p>12 A. Yes.</p> <p>13 <b>Q. So when I use that phrase, can we agree that</b></p> <p>14 <b>I'm talking about the phrase as used in the statute and</b></p> <p>15 <b>regulations?</b></p> <p>16 A. I'm familiar with it. If you were to ask me</p> <p>17 which of my photographs are sexually explicit according</p> <p>18 to the statute and which are not, I don't think I can --</p> <p>19 there are some photos, I think, that are obviously not</p> <p>20 sexuality explicit. There are some photographs that</p> <p>21 are, in my mind, sexually explicit. And then there</p> <p>22 would be a whole bunch in the middle that I don't know</p> <p>23 how the statute would interpret them.</p> <p>24 <b>Q. Is there a -- you've described, I think, some</b></p> <p>25 <b>of your rationale or motivations for the kind of</b></p> </div>
<div>Page 34</div> <div> <p>1 photographs in art shows, but I haven't published any of</p> <p>2 those photographs to date.</p> <p>3 <b>Q. Is that something that they commission from you</b></p> <p>4 <b>or pay for?</b></p> <p>5 A. No.</p> <p>6 <b>Q. It's something you asked them to allow you to</b></p> <p>7 <b>do?</b></p> <p>8 A. The circumstance of Public Disgrace is that</p> <p>9 there's an audience of people, and people in the</p> <p>10 audience are allowed and encouraged, actually, to take</p> <p>11 photographs for private use. Because I was doing --</p> <p>12 initially, this was before the story that I was doing</p> <p>13 for Cupido. Then I had to ask them for permission to</p> <p>14 use photographs that I had taken there for that purpose,</p> <p>15 and I obtained permission for that.</p> <p>16 And when I've had shows I've had to ask them</p> <p>17 for permission to show photographs that I've taken at</p> <p>18 those shows, and they've granted me permission. So I</p> <p>19 believe that technically I own the photographs, but I</p> <p>20 don't have permission to do anything with them without</p> <p>21 their permission.</p> <p>22 <b>Q. Are the photographs you take -- they're of what</b></p> <p>23 <b>would be considered sexually explicit conduct?</b></p> <p>24 A. Some of them are and some of them are not.</p> <p>25 <b>Q. And when I say "sexually explicit conduct," do</b></p> </div>	<div>Page 36</div> <div> <p>1 <b>photographic work that you do. How would you describe</b></p> <p>2 <b>the difference in terms of the visual difference between</b></p> <p>3 <b>your work and what would be considered mainstream</b></p> <p>4 <b>pornography? Do you agree with the use of the term</b></p> <p>5 <b>"mainstream pornography" to describe the adult industry,</b></p> <p>6 <b>or is there another term you would use?</b></p> <p>7 A. That's pretty good. I usually use "commercial</p> <p>8 pornography," because, to me, what you're calling</p> <p>9 "mainstream pornography -- there's a whole distribution</p> <p>10 network. There's a whole -- so I usually say</p> <p>11 "commercial pornography," but "mainstream pornography"</p> <p>12 is fine. I think we would be talking about the same</p> <p>13 thing.</p> <p>14 <b>MS. BAUMGARDNER:</b> And I'll show an objection to</p> <p>15 that. I think there were multiple questions in that.</p> <p>16 <b>BY MS. WYER:</b></p> <p>17 <b>Q. Okay. So, first, we're agreed on the use of</b></p> <p>18 <b>the term "commercial pornography" or "mainstream</b></p> <p>19 <b>pornography" to refer to what could be called the "adult</b></p> <p>20 <b>industry," or -- I don't know how to define it, but --</b></p> <p>21 A. I don't -- that's one of the -- for example, is</p> <p>22 Cupido Magazine part of what you're calling the "adult</p> <p>23 industry"? Cupido Magazine would say, absolutely not.</p> <p>24 People in Norway would say, absolutely not; it's sold at</p> <p>25 drug stores and supermarkets, not in porn shops. And it</p> </div>

<div>Page 37</div> <div> <p>1 was created as an alternative to so-called mainstream</p> <p>2 pornography in Norway. But you might think Cupido was</p> <p>3 mainstream pornography. I don't.</p> <p>4 <b>Q. Is that -- is it a subject determination?</b></p> <p>5 A. Definitely. Unless you can show me a</p> <p>6 definition, then I can say, you know, "If you're" -- in</p> <p>7 Norway the law is very clear. If genitals are</p> <p>8 touching -- they've changed the law now. Until</p> <p>9 recently, if genitals were touching, then it was</p> <p>10 illegal. If there was the slightest bit of space</p> <p>11 between the genitals touching, then it was legal.</p> <p>12 If you have a definition like that, then you</p> <p>13 can say, "Okay, this is in Category A; this is in</p> <p>14 Category B." We do not have anything like that in this</p> <p>15 country, which is one of the problems with laws trying</p> <p>16 to regulate sexual imagery. So nobody knows what the</p> <p>17 boundary line is.</p> <p>18 I could show you 100 photographs, and I'd say,</p> <p>19 "You tell me which of these are pornographic and which</p> <p>20 are not."</p> <p>21 <b>Q. Are you familiar with different genres of</b></p> <p>22 <b>pornography, such as what could be called "amateur</b></p> <p>23 <b>pornography"?</b></p> <p>24 <b>MS. BAUMGARDNER:</b> Objection.</p> <p>25 <b>THE WITNESS:</b> I've heard of people talking of</p> </div>	<div>Page 39</div> <div> <p>1 A. So subjective means -- this is my point of</p> <p>2 view. My point of view, I believe that the purpose of</p> <p>3 most -- what you're calling mainstream pornography is to</p> <p>4 turn people on, to arouse people. Pornography has been a</p> <p>5 masturbation tool for most of its existence in this</p> <p>6 country. I think that the people who make mainstream</p> <p>7 pornography, for the most part, want to turn people on.</p> <p>8 The purpose of my photography is not to turn</p> <p>9 people on. Although, it may turn people on. The</p> <p>10 purpose of my photography is to say something about</p> <p>11 sexuality other than "Oh, look, sex is happening and we</p> <p>12 get to watch." I want it to, as with all art, make a</p> <p>13 statement about the important aspect of existence that</p> <p>14 is human sexuality. This is what people are really</p> <p>15 like. This is what intimacy is about. This is what</p> <p>16 emotional connection with another human being is about</p> <p>17 through being sexual. That's what I'm going for in my</p> <p>18 photography.</p> <p>19 Whether other -- although the purpose of my</p> <p>20 photographs is not to turn people on, it may turn people</p> <p>21 on. Although the purpose, it seems to me, of most</p> <p>22 commercial pornography is to turn people on, it may also</p> <p>23 be making a statement about human sexuality. I just</p> <p>24 don't think that that's generally the prime purpose. So</p> <p>25 in that way, that's how I see my work as being different</p> </div>
<div>Page 38</div> <div> <p>1 amateur pornography.</p> <p>2 <b>BY MS. WYER:</b></p> <p>3 <b>Q. And what does that mean, in your understanding?</b></p> <p>4 A. Some combination of people who are genuinely</p> <p>5 amateur, in the sense of not having any monetary</p> <p>6 interest, doing sexual pornography. But probably more</p> <p>7 often people pretending to be amateurs, as a way of</p> <p>8 marketing their own commercial pornography.</p> <p>9 <b>Q. Can you identify any objective differences</b></p> <p>10 <b>between your photographic work and what could be called</b></p> <p>11 <b>"amateur pornography."</b></p> <p>12 <b>MS. BAUMGARDNER:</b> Objection.</p> <p>13 <b>THE WITNESS:</b> Objective differences, no. I</p> <p>14 could identify subjective differences, but not -- I</p> <p>15 don't think there are any. I mean, I don't know what</p> <p>16 objective -- I'm a mathematician. I know what objective</p> <p>17 is. I don't think that objective -- that the word</p> <p>18 "objective" pertains, unless you say, "If the genitals</p> <p>19 are touching, then it's this. And if they're not, then</p> <p>20 it's that." Then you have an objective criterion to</p> <p>21 judge with. You know, "I know it when I see it" is not</p> <p>22 an objective criteria.</p> <p>23 <b>BY MS. WYER:</b></p> <p>24 <b>Q. What are the subjective differences that you</b></p> <p>25 <b>would identify?</b></p> </div>	<div>Page 40</div> <div> <p>1 from mainstream pornography; although, there are</p> <p>2 overlaps. But I think primary intent is significant,</p> <p>3 and that's what my primary intent is.</p> <p>4 Nobody at -- out of all the shows that I've</p> <p>5 had, of all the books I've published, nobody has ever</p> <p>6 said, "I think your work is pornographic." So somebody</p> <p>7 sees a difference, and each person's subjective criteria</p> <p>8 would be different. That's the way it is with</p> <p>9 subjective criteria.</p> <p>10 <b>Q. But there's no way to define the</b></p> <p>11 <b>visual distinct -- you can't define anything about the</b></p> <p>12 <b>appearance of a photograph that clearly reflects the</b></p> <p>13 <b>intent of the photographer?</b></p> <p>14 <b>MS. BAUMGARDNER:</b> Objection.</p> <p>15 <b>THE WITNESS:</b> No, I don't think you can at all,</p> <p>16 and therein is the problem. I've seen work by</p> <p>17 photographers who I know their intent is being totally</p> <p>18 misunderstood. Artists have always been misunderstood,</p> <p>19 and one of the things as an artist is, you subject</p> <p>20 yourself to the possibility of being misunderstood. The</p> <p>21 problem with 2257 is not only do you subject yourself to</p> <p>22 the possibility of being misunderstood, you subject</p> <p>23 yourself to the possibility of going to jail.</p> <p>24 <b>BY MS. WYER:</b></p> <p>25 <b>Q. Let me go back and talk about the works that</b></p> </div>

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1 work with the technical advisor, and he would accomplish  
2 that. But the decision about what to post would be  
3 mine.

4 **Q. So in the past when you were -- when material**  
5 **was being posted, did you provide the content that you**  
6 **wanted to be posted?**

7 A. Yes.

8 **Q. Did you control the layout of how it appeared?**

9 A. A.D. Colman, who hosts the website, and the web  
10 designer he was working with, put the design together  
11 and got my approval for it.

12 **MS. WYER:** We'll mark this as Exhibit 4.  
13 (Whereupon, Defendant's Exhibit No. 4 was  
14 marked for identification.)

15 **BY MS. WYER:**

16 **Q. You've just been handed what's been marked as**  
17 **Steinberg 4. Is this your introduction to the section**  
18 **of the Nearby Cafe website that is your section?**

19 A. It looks like it.

20 **Q. The last time that you updated anything here**  
21 **was in -- 15 years ago?**

22 A. This says -- well, this says copyright 2005, so  
23 maybe it was eight years ago. Yeah, I guess -- I don't  
24 remember, but I'm looking at this, and this says "2005,"  
25 so that's possible. When the website -- when this part

1 **BY MS. WYER:**

2 **Q. Did you provide A.D. Colman with copies of all**  
3 **of the 2257 records related to these photographs?**

4 A. Yes.

5 **Q. So he has complete copies of those?**

6 A. Yes.

7 **Q. And the address listed on the 2257 statement**  
8 **would be his address? Or is it your address?**

9 A. I don't -- I think so. I don't know what  
10 address he's using.

11 **Q. Do you think it's his or yours?**

12 A. I don't know. It's not mine. I don't know if  
13 it's his home, his office, his whatever, but it's  
14 different from -- it's not mine.

15 **Q. Okay. So Exhibit 3, it states that -- and this**  
16 **is kind of -- this was not written by you, correct, or**  
17 **was it?**

18 A. That's correct.

19 **Q. It was written --**

20 A. -- by Allan Colman.

21 **Q. And it states that, "This portion of the Nearby**  
22 **Cafe website serves as the central web repository for**  
23 **all of David Steinberg's diverse activities."**

24 **Is that accurate at this point?**

25 A. Yes. It's the -- it's as close to a central

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1 of the website was originally set up, it was a huge  
2 project, and nothing has changed since then.

3 **Q. You mean you provided all the initial content**  
4 **and it has never been updated?**

5 A. That's correct.

6 **MS. WYER:** Okay. We'll mark this as Steinberg  
7 5.

8 (Whereupon, Defendant's Exhibit No. 5 was  
9 marked for identification.)

10 **BY MS. WYER:**

11 **Q. The exhibit marked as Steinberg 5, is this the**  
12 **initial portal for the photographic portfolios on the**  
13 **website, on yours?**

14 A. Yes.

15 **Q. Do you know where on the website the 2257**  
16 **statement is?**

17 A. No. I know it's there. I've found it myself  
18 by searching the website for 2257, and it took me there.

19 **Q. Okay. Because I've not been able to find it.**

20 **MS. BAUMGARDNER:** I think he supplied  
21 directions in an answer to an interrogatory or requests  
22 for production.

23 **THE WITNESS:** It's there. I've seen it. I  
24 just don't remember specifically where on the site it  
25 is.

1 repository as I have.

2 **Q. Why was this website set up?**

3 **MS. BAUMGARDNER:** Objection.

4 **THE WITNESS:** Why did Allan Colman set up the  
5 website?

6 **BY MS. WYER:**

7 **Q. Was he the one that initiated the project of**  
8 **setting this up?**

9 A. Yes.

10 **Q. Do you know why he did that?**

11 A. No. I really -- I could guess, but I don't  
12 know. He asked me to be part of it, and I agreed.

13 **Q. So this was not a commercial effort on your**  
14 **part?**

15 A. Well, it had commercial interest to me because  
16 it was a way to make my work known. The original plan  
17 was that books of mine could be purchased through the  
18 website, although that actually never got set up. So  
19 there was some commercial interest for me in terms of  
20 promoting my work.

21 But, as is the case, my interest in my work is  
22 somewhat commercial, but that's not the main purpose of  
23 my work, to make money from it. My main purpose is to  
24 make a statement about human sexuality, and, of course,  
25 I would like to make some money from it. Generally, I

<div>Page 65</div> <div> <p>1 what does that reflect? In your view, when you say</p> <p>2 "advertisements contain a certain kind of image," what</p> <p>3 does that reflect?</p> <p>4 MS. BAUMGARDNER: Objection.</p> <p>5 THE WITNESS: I think advertisements both</p> <p>6 establish and reinforce stereotypical notions of who is</p> <p>7 attractive or sexually desirable. The components of</p> <p>8 that -- those aesthetic judgments are complex and</p> <p>9 involve age, how symmetrical a face is, how symmetrical</p> <p>10 a body is, whether a person has smooth skin or not</p> <p>11 smooth skin, frizzy hair or silky hair, and so on. The</p> <p>12 components of what is beautiful has been subject to many</p> <p>13 studies. I'm not an expert in those.</p> <p>14 BY MS. WYER:</p> <p>15 Q. But you use something as a benchmark against</p> <p>16 which you are trying to put yourself -- your work as a</p> <p>17 contrast or as a counterpoint?</p> <p>18 MS. BAUMGARDNER: Objection. I think that</p> <p>19 mischaracterizes what Mr. Steinberg has testified to.</p> <p>20 THE WITNESS: I photograph a wide variety of</p> <p>21 couples. I'm especially happy when couples who do not</p> <p>22 reinforce societal stereotypes of who is beautiful or</p> <p>23 sexually attractive and want to be photographed by me.</p> <p>24 And I emphasize those works when I have art shows, and I</p> <p>25 will emphasize those works in the books that I'm working</p> </div>	<div>Page 67</div> <div> <p>1 MS. BAUMGARDNER: Objection.</p> <p>2 THE WITNESS: Many factors would go into it.</p> <p>3 It can be complicated to decide. I'm very bad at</p> <p>4 estimating people's ages in general. No, I don't think</p> <p>5 that you can, you know, make hard and fast rules about</p> <p>6 how you could visually determine somebody's age, and I</p> <p>7 certainly don't try to do that myself.</p> <p>8 But if I'm photographing somebody who's 72</p> <p>9 years old, which I have done, it is odd to be -- have to</p> <p>10 prove that they're not 18, compared, for example, to</p> <p>11 when somebody buys cigarettes or somebody buys alcohol.</p> <p>12 Nobody cards me when I walk into a liquor store and</p> <p>13 says, "Prove to me that you're 21 years old.</p> <p>14 BY MS. WYER:</p> <p>15 Q. Is there a correlation, in your view, between</p> <p>16 how old a person looks and whether the person is</p> <p>17 perceived as beautiful or glamorous, which are terms</p> <p>18 that you used in your response to Interrogatory 7?</p> <p>19 A. It varies. I think there are very few</p> <p>20 75-year-old people who are considered glamorous.</p> <p>21 Q. Do you think a person who is seen as beautiful</p> <p>22 or glamorous may be perceived as younger than they</p> <p>23 actually are?</p> <p>24 A. Yes.</p> <p>25 Q. Do you think a person who is not seen as</p> </div>
<div>Page 66</div> <div> <p>1 on. So I tend to emphasize people who are older, you</p> <p>2 know, older than what you say.</p> <p>3 But somebody who's 50 compared to somebody</p> <p>4 who's 25 is going to be more likely to show up in my</p> <p>5 book; somebody who's heavier compared to somebody who's</p> <p>6 thinner; somebody who's not Caucasian compared to</p> <p>7 somebody who is Caucasian; somebody who has a disability</p> <p>8 compared to somebody who does not have a disability. I</p> <p>9 want to emphasize works that counter the stereotypes</p> <p>10 that I see in society of who is beautiful and sexually</p> <p>11 desirable.</p> <p>12 BY MS. WYER:</p> <p>13 Q. Going back to your response to Interrogatory 7</p> <p>14 and your use of the terms "clearly and obviously adults</p> <p>15 and mature couples," do you contend that it is possible</p> <p>16 to determine a person's age based on their visual</p> <p>17 appearance?</p> <p>18 A. Sometimes.</p> <p>19 Q. Within what degree of accuracy?</p> <p>20 A. Lorraine is not under 18; I would bet with 99.9</p> <p>21 percent accuracy on that. You are not under 18, I would</p> <p>22 bet that with 80 percent accuracy. I think it varies</p> <p>23 from person to person. Obviously, I am not under 18.</p> <p>24 Q. Does it depend on the person's age how</p> <p>25 accurately you can tell their age?</p> </div>	<div>Page 68</div> <div> <p>1 beautiful or glamorous may appear older than they</p> <p>2 actually are?</p> <p>3 A. Possibly. I think anybody -- some people look</p> <p>4 older than they are; some people look younger than they</p> <p>5 are. Whether being glamorous makes you look younger or</p> <p>6 older, well, you can ask the people over at Estee Lauder</p> <p>7 about that.</p> <p>8 Q. Is there a correlation between whether a person</p> <p>9 has a physical disability and how old the person looks?</p> <p>10 A. Personally, I would say probably not.</p> <p>11 Q. In your response to Interrogatory 9, which the</p> <p>12 question starts on page 5 and your response is on page</p> <p>13 6 --</p> <p>14 A. Oh, okay. Yes.</p> <p>15 Q. Do you recall preparing this response?</p> <p>16 A. Yes.</p> <p>17 Q. This asks for a breakdown of the ages of</p> <p>18 individuals appearing in your work, correct?</p> <p>19 A. Yes.</p> <p>20 Q. How did you determine the breakdown that's</p> <p>21 provided here?</p> <p>22 A. My wonderful spreadsheet.</p> <p>23 Q. So you used your spreadsheet that you created</p> <p>24 for purposes of complying with 2257 in order to provide</p> <p>25 this information?</p> </div>



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1 A. Yes.

2 **Q. Does the sum of all of these categories**

3 **represent the total number of individuals that you**

4 **photographed in works that you -- that you considered**

5 **depictions of sexually explicit conduct as of the date**

6 **you provided the response?**

7 A. This represents all the people that I

8 photographed. When I take a photograph of a couple

9 being sexual, it's quite possible that half of those

10 photographs are not sexually explicit at all. So this

11 is not broken down according to which photographs are

12 sexually explicit or not. I wouldn't know how to do

13 that. This is a breakdown of all the people I have

14 photographed. I believe this wasn't just my couples

15 photography.

16 **Q. Okay. So this is --**

17 A. But it might include the transsexual pictures,

18 but I don't remember whether I included those or not.

19 **Q. Do you have 2257 records for the transsexual**

20 **pictures?**

21 A. Oh, no, I don't. So you're right, I probably

22 did not. So this must be the people involved in the

23 couples photography.

24 **Q. All of the couples photography involved**

25 **photography of couples having sex?**

1 A. Yes.

2 **Q. -- up to that time?**

3 A. Yes.

4 **Q. So the first two categories are 19 to 20, which**

5 **you identified four, and 21 to 25 you identified 52. So**

6 **that means that 56 individuals out of the 395 were 25 or**

7 **younger at the time you took their photographs?**

8 A. Right.

9 **Q. Correct?**

10 A. Right, about 15 percent.

11 **Q. And 97, if you add up the first three, which**

12 **includes 26 to 30, 97 of the individuals were 30 or**

13 **younger, correct?**

14 A. Okay.

15 **Q. So you do not rule out taking photographs of**

16 **younger individuals?**

17 A. No.

18 **Q. Have you ever refused to photograph someone**

19 **because he or she was too young?**

20 A. No, I have not had that problem.

21 **Q. If an 18-year-old couple asks you to photograph**

22 **them having sex, would you do so?**

23 A. Probably.

24 **Q. And you indicated, at the bottom line of your**

25 **response, that you have more than 1,000 images in each**

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1 A. Yes.

2 **Q. So at least some of the photographs in a shoot**

3 **would show those individuals having sex?**

4 A. Yes, I think that's right. Of these models

5 we're talking about here, I have sexually explicit

6 photos -- at least one sexually explicit photo of all of

7 them. I think that's right.

8 **Q. And this is accurate as of the date you**

9 **provided the response?**

10 A. Yes.

11 **Q. So that's October -- you probably provided it**

12 **sometime before we got it, so approximately**

13 **October 2012?**

14 A. That sounds right.

15 **Q. And the total here -- if you add up all of**

16 **these numbers: 4 plus 52 plus 41 plus 41 plus 87 plus**

17 **60 plus 37 plus 27 plus 42 plus 4 is 395?**

18 A. If you say so.

19 **MS. BAUMGARDNER:** You're the mathematician. We

20 should make you add it up.

21 **THE WITNESS:** I'm good but I'm not that fast.

22 **BY MS. WYER:**

23 **Q. Does that -- would that represent all of the**

24 **individuals you photographed in the adult couple having**

25 **sex photographs --**

1 **age group. And that's because when you have a session**

2 **with a couple, you take a lot of photographs of that**

3 **couple, correct?**

4 A. Yes.

5 **Q. Do you keep separate 2257 records for every**

6 **image?**

7 A. That would be -- talking about burdensome. No,

8 I do not. No, I have one -- the age of the couple does

9 not change during a shoot significantly. Actually, it

10 does not change at all.

11 **Q. So you just keep the records according to the**

12 **shoot?**

13 A. Yes.

14 **MS. WYER:** We'll mark this as Steinberg 7.

15 (Whereupon, Defendant's Exhibit No. 7 was

16 marked for identification.)

17 **BY MS. WYER:**

18 **Q. Exhibit Steinberg 7, is that a photograph from**

19 **your -- from the Nearby Cafe, your part of the website?**

20 A. Yes.

21 **Q. Is that a photograph that you took?**

22 A. Yes.

23 **Q. Can you tell how old the individuals in the**

24 **central photograph were?**

25 A. By looking at the photograph?



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1 documentation that the model has given you permission to  
2 use the photograph that's taken?

3 A. Yes.

4 Q. Would you -- do you use model releases for  
5 every photograph that you take?

6 A. No, but sometimes every photograph that I'm  
7 taking with a purpose of showing or publishing, or  
8 selling.

9 Q. How often do you take photographs that don't  
10 have one of those purposes?

11 A. Often. I take a lot of photography at Divas,  
12 the transsexual club, mostly just as a favor to the  
13 people I'm photographing. But in terms of the sexual  
14 photography that we've been talking about, I always  
15 intend to use them and I always get releases.

16 Q. Is there any aspect of the process of signing a  
17 model release that has to do with age verification?

18 A. No.

19 Q. Are there any practices of your profession as a  
20 photographer that relate to the ages of subjects in  
21 sexually explicit photographs other than the 2257  
22 requirements?

23 A. Wait. I didn't hear what you said. Are there  
24 any what?

25 Q. Are there any practices of your profession, as

1 of explicit -- I mean, I presume that anybody who wants  
2 to show my work knows that it's illegal to take pictures  
3 of people under age and wouldn't do that or want to do  
4 that. But it's understood. It's not something  
5 talked about. Nobody is going to say, "Listen, you have  
6 to make sure your models are 18."

7 Q. Are you familiar with the American Society of  
8 Media Photographers?

9 A. Only that they're plaintiffs in the suit.

10 Q. Had you heard of them before?

11 A. No.

12 Q. So you're not a member of that organization?

13 A. No.

14 Q. Do you have any understanding of what that  
15 organization does?

16 A. No.

17 Q. Do you know any members of that organization?

18 A. Not that I know of. I may, but I don't know  
19 that for a fact.

20 Q. Are you familiar with the Free Speech  
21 Coalition?

22 A. Yes.

23 Q. Were you familiar with that organization before  
24 this -- before hearing about this lawsuit?

25 A. Yes.

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1 a -- of the profession of photography that relate to age  
2 verification of individuals appearing in sexually  
3 explicit images?

4 MS. BAUMGARDNER: Objection.

5 THE WITNESS: I don't understand. I mean, my  
6 profession is I'm a photographer, and there are other  
7 photographers. Are there standard practices among  
8 photographers about that?

9 Q. Yes.

10 A. Not that I know of.

11 Q. In order to be a professional photographer, do  
12 you have to have a license?

13 A. No.

14 Q. So you're not governed by any conditions of  
15 licensing in your use of models?

16 A. That's correct.

17 Q. Are you a party to any contract that imposes  
18 obligations on you with respect to the ages of models in  
19 your work?

20 A. In taking the photographs, no. If I wanted to  
21 submit photos somewhere or whoever I'm submitting photos  
22 to could have their own criteria, but that's a different  
23 story.

24 Q. Has that occurred?

25 A. Related to the age of the models, no. In terms

1 Q. How are you aware of that organization?

2 A. Kat Sunlove, who was an earlier publisher of  
3 Spectator Magazine, was active in the Free Speech  
4 Coalition. I knew about it through her.

5 Q. Are you a member of the Free Speech Coalition?

6 A. No.

7 Q. Have you been a member in the past?

8 A. I don't think so.

9 Q. Do you know any other members other than --

10 A. Kat Sunlove, K-A-T S-U-N-L-O-V-E, probably. I  
11 think a lot of the people at Spectator Magazine were  
12 involved with Free Speech Coalition, but I don't  
13 specifically know who was a member.

14 Q. What is your understanding of the purpose of  
15 the Free Speech Coalition?

16 A. To advocate against unreasonable constraints  
17 against free speech related to adult sexual material.

18 Q. How did you become a plaintiff in this case?

19 A. I believe that Lorraine called me and told me  
20 about the suit and asked if I wanted to become a  
21 plaintiff.

22 Q. Did you know Lorraine before that time?

23 A. No.

24 Q. I think you mentioned one other organization  
25 that you were a member of, but I can't remember.

<div>Page 125</div> <div> <p>1 you could identify the ages of each of those, the</p> <p>2 persons depicted in those. Do you remember that?</p> <p>3 A. Yes.</p> <p>4 Q. And you were unable to identify their exact</p> <p>5 ages; is that correct?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. You are able to identify one important</p> <p>8 fact about each of those models depicted, however,</p> <p>9 aren't you --</p> <p>10 MS. WYER: Objection; leading.</p> <p>11 BY MS. BAUMGARDNER:</p> <p>12 Q. -- that they are all adults over the age of 18</p> <p>13 years of age?</p> <p>14 MS. WYER: Objection; leading.</p> <p>15 THE WITNESS: I can identify it because I have</p> <p>16 their records on file, and they're my models. I think I</p> <p>17 said at the time I could. If you asked me for their</p> <p>18 age, I could look up their ages and confirm their ages.</p> <p>19 But that's different from being able to visually</p> <p>20 determine their age from looking at a photo.</p> <p>21 BY MS. BAUMGARDNER:</p> <p>22 Q. Correct. But you are certain that all of the</p> <p>23 people depicted are adults?</p> <p>24 A. Yes.</p> <p>25 MS. WYER: Objection; leading.</p> </div>	<div>Page 127</div> <div> <p>1 child pornography. Two, about -- for example, if a</p> <p>2 photographer signs a model release and they're not 18,</p> <p>3 then you can't enforce the model release. So there's</p> <p>4 a -- you know, there are many reasons for a photographer</p> <p>5 to identify -- to determine and verify the age of their</p> <p>6 models.</p> <p>7 I would -- if somebody wanted me to take sexual</p> <p>8 pictures of them, I would not want to do anything</p> <p>9 before -- if I had any doubt whatsoever before</p> <p>10 determining their age, just because I wouldn't want to</p> <p>11 take a picture of an underage person. I certainly</p> <p>12 wouldn't want to subject myself to potential prosecution</p> <p>13 for that.</p> <p>14 Q. Okay.</p> <p>15 A. The people doing fine art sexual photography</p> <p>16 are a responsible group of people. We -- I mean, in any</p> <p>17 group of people, I guess there might be somebody that's</p> <p>18 weird. But, you know, I've represented over 200</p> <p>19 photographers to Cupido Magazine, and this started with</p> <p>20 people that I knew but also includes now people that</p> <p>21 e-mail me out of the blue. I have no idea who they are,</p> <p>22 and I've never had any reason to question the integrity</p> <p>23 of any of them.</p> <p>24 So I don't think 2257 is required in order to</p> <p>25 be sure that photographers take care -- to think about</p> </div>
<div>Page 126</div> <div> <p>1 THE WITNESS: These are my models. I don't</p> <p>2 photograph people under 18.</p> <p>3 BY MS. BAUMGARDNER:</p> <p>4 Q. And that's because there is a very important</p> <p>5 law in the United States against that; isn't that true?</p> <p>6 MS. WYER: Objection; leading.</p> <p>7 THE WITNESS: Yeah, they're all the anti-child</p> <p>8 pornography laws that make it illegal to photograph</p> <p>9 people under 18 in sexual illicit ways.</p> <p>10 BY MS. BAUMGARDNER:</p> <p>11 Q. And so as a matter of practice, you would</p> <p>12 require IDs of anyone if there was any question in your</p> <p>13 mind -- maybe even if there weren't a question in your</p> <p>14 mind -- that they would produce proof of their age in</p> <p>15 order for you to photograph them; isn't that true?</p> <p>16 MS. WYER: Objection; leading.</p> <p>17 THE WITNESS: I think that any responsible</p> <p>18 photographer would want to check the age of their models</p> <p>19 and make a record of that to protect them if there was</p> <p>20 ever any question in the sort of system that I was</p> <p>21 purposing as a more reasonable system for dealing with</p> <p>22 sexual photography of underaged people.</p> <p>23 That comes off of an understanding that any</p> <p>24 photographer in his right mind would protect himself or</p> <p>25 herself against potential legal problems. One, about</p> </div>	<div>Page 128</div> <div> <p>1 the ages of the people that they're photographing. I</p> <p>2 just think, you know, unless somebody was really into</p> <p>3 producing child pornography for the purpose of producing</p> <p>4 child pornography, which is a whole 'nother group of</p> <p>5 people, nobody is going to take photographs of people</p> <p>6 unless they're damn sure that they know the ages of the</p> <p>7 people that are -- you know, the majority of -- meaning</p> <p>8 over 18 of their models.</p> <p>9 MS. BAUMGARDNER: Thank you.</p> <p>10 MS. WYER: I have some follow-up questions.</p> <p>11 FURTHER EXAMINATION</p> <p>12 BY MS. WYER:</p> <p>13 Q. How do you know whether someone is a fine art</p> <p>14 sexual photographer?</p> <p>15 A. Well, you don't. I know, because those are the</p> <p>16 people who -- that's who contacts me because they know</p> <p>17 that that's what I'm interested in. I'm just saying,</p> <p>18 of all the people -- maybe I shouldn't classify</p> <p>19 everybody that -- of all of the photographers who have</p> <p>20 contacted me in the -- what is it, 25 years now that</p> <p>21 I've been brokering, you know, being the Cupido's rep in</p> <p>22 the U.S., I've never dealt with anybody that I have any</p> <p>23 reason to believe was not a person of integrity, in</p> <p>24 terms of what they were doing with their photography and</p> <p>25 who they were photographing.</p> </div>

<div>Page 129</div> <div> <div>1 I don't know everybody personally. I can't</div> <div>2 100 percent vouch for everybody. I'm just saying that I</div> <div>3 would -- I just think that anybody who is photographing</div> <div>4 anybody whose age could possibly be questioned would</div> <div>5 have to be really stupid to not say, "Hey, let me see</div> <div>6 your ID before I take your picture." And if they were</div> <div>7 smart, they would then make a record of it.</div> <div>8 <b>Q. And 2257 requires age verification and keeping</b></div> <div>9 <b>records, correct?</b></div> <div>10 A. Yes. The problem with 2257 is it requires so</div> <div>11 much more above and beyond what would be reasonable to</div> <div>12 ensure that people under 18 were not being exploited for</div> <div>13 sexual photography. That's the problem with 2257, not</div> <div>14 what its intent is but the lengths to which it goes,</div> <div>15 allegedly in that interest, so much so that it makes you</div> <div>16 question what the real intent of what 2257 is.</div> <div>17 <b>Q. Does the age verification requirement make you</b></div> <div>18 <b>question the intent --</b></div> <div>19 <b>MS. BAUMGARDNER:</b> Objection.</div> <div>20 <b>BY MS. WYER:</b></div> <div>21 <b>Q. -- the requirement to check photo IDs by</b></div> <div>22 <b>itself?</b></div> <div>23 <b>MS. BAUMGARDNER:</b> Objection.</div> <div>24 <b>THE WITNESS:</b> Well, it makes me question either</div> <div>25 the intent or the sanity of the people who wrote the</div> </div>	<div>Page 131</div> <div> <div>1 You don't have to set up a whole structure that</div> <div>2 says, "You must have these records. You must keep them</div> <div>3 in such and such a way in order to make it in the</div> <div>4 self-interest of photographers to be careful about who</div> <div>5 they're photographing in terms of their age." All you</div> <div>6 have to do is say, "Look, if anybody questions this and</div> <div>7 you can't prove that this person is under 18, you're</div> <div>8 going to be in deep trouble."</div> <div>9 That seems to be perfectly adequate to result</div> <div>10 in a situation where photographers will, in fact, make</div> <div>11 sure that the people they are photographing are over 18.</div> <div>12 <b>MS. WYER:</b> I have no more questions.</div> <div>13 Thank you for appearing here today.</div> <div>14 <b>THE WITNESS:</b> You're welcome.</div> <div>15 (At 1:23 P.M., the deposition proceedings</div> <div>16 concluded.)</div> <div>17</div> <div>18</div> <div>19 -----</div> <div>20 STEVEN DAVID STEINBERG</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div> </div>
<div>Page 130</div> <div> <div>1 law. I mean, there are so many obviously better ways to</div> <div>2 do this. That, combined with the prior existence of</div> <div>3 adequate legal means to prosecute people who are</div> <div>4 producing child pornography is beyond me. I mean, I can</div> <div>5 understand somebody coming up with 2257 to get</div> <div>6 reelected. I can't really understand somebody coming up</div> <div>7 with this in order to protect children.</div> <div>8 <b>BY MS. WYER:</b></div> <div>9 <b>Q. So what is the intent that you are talking</b></div> <div>10 <b>about?</b></div> <div>11 A. I think that this is an issue. It's a highly</div> <div>12 charged issue that is being exploited by politicians for</div> <div>13 their own purposes.</div> <div>14 <b>Q. And the alternative that you suggested was that</b></div> <div>15 <b>records should not be required until after the image was</b></div> <div>16 <b>made?</b></div> <div>17 <b>MS. BAUMGARDNER:</b> Objection.</div> <div>18 <b>THE WITNESS:</b> I think that -- if I was</div> <div>19 designing the system, it would not be that the</div> <div>20 government requires photographers to do this, rather</div> <div>21 that photographers would understand that they may have</div> <div>22 to come up with these records, which would make it the</div> <div>23 obvious thing to do, for photographers to obtain -- you</div> <div>24 know, to check the IDs and get copies, verification, in</div> <div>25 case they were ever questioned.</div> </div>	<div>Page 132</div> <div> <div>1 STATE OF CALIFORNIA )</div> <div>2 ) Ss.</div> <div>3 COUNTY OF SAN FRANCISCO )</div> <div>4</div> <div>5 I hereby certify that the witness in the</div> <div>6 foregoing deposition, STEVEN DAVID STEINBERG, was by me</div> <div>7 duly sworn to testify to the truth, the whole truth, and</div> <div>8 nothing but the truth, in the within-entitled cause;</div> <div>9 that said deposition was taken at the time and place</div> <div>10 herein named; that the deposition is a true record of</div> <div>11 the witness's testimony as reported by me, a duly</div> <div>12 certified shorthand reporter and a disinterested person,</div> <div>13 and was thereafter transcribed into typewriting by</div> <div>14 computer.</div> <div>15 I further certify that I am not interested in</div> <div>16 the outcome of the said action, nor connected with, nor</div> <div>17 related to any of the parties in said action, nor to</div> <div>18 their respective counsel.</div> <div>19 IN WITNESS WHEREOF, I have hereunto set my hand</div> <div>20 this 1st day of May, 2013.</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div> </div>

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CASE NO. 2:09-4607  
Judge Michael M. Baylson

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FREE SPEECH COALITION, IND.,;  
AMERICAN SOCIETY OF MEDIA PHOTOGRAPHERS, INC.;  
MICHAEL BARONE;  
DAVID CONNERS a.k.a. DAVE CUMMINGS;  
THOMAS HYMES;  
TOWNSEND ENTERPRISES, INC., d.b.a.  
SINCLAIR INSTITUTE;  
C 1 R DISTRIBUTION, LLC. d.b.a CHANNEL 1 RELEASING;  
BARBARA ALPER; CAROL QUEEN; BARBARA NITKE;  
DAVID STEINBERG; MARIE L. LEVIN a.k.a NINA HARTLEY;  
DAVE LEVINGTSON; BETTY DODSON; and CARLIN ROSS,

Plaintiffs,

v.

THE HONORABLE ERIC H. HOLDER, JR.,  
in his official capacity as Attorney General of the United States,

Defendant.  
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Deposition

of

LINDA DIAN WILSON

In Raleigh, North Carolina  
Wednesday, April 3, 2013  
8:59 a.m. - 4:17 p.m.

Reported by:  
Margaret M. Powell, CVR-M  
919.779.0322

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## STIPULATIONS

IT IS HEREBY STIPULATED AND AGREED BETWEEN THE PARTIES TO THIS ACTION THROUGH THEIR RESPECTIVE COUNSEL OF RECORD:

- ON MOTION OF COUNSEL FOR THE DEFENDANT, THE ORAL DEPOSITION OF LINDA DIAN WILSON MAY BE TAKEN BEGINNING AT OR AROUND 9:00 A.M. ON April 3, 2013, AT THE OFFICES OF THE UNITED STATES ATTORNEY IN RALEIGH, NORTH CAROLINA, BEFORE MARGARET M. POWELL, CERTIFIED VERBATIM REPORTER AND NOTARY PUBLIC;
- FORMAL OPENING AND CLOSING OF THE DEPOSITION BY THE COURT REPORTER IS WAIVED;
- THE FEDERAL RULES OF CIVIL PROCEDURE SHALL CONTROL THE TAKING OF SAID DEPOSITION AND THE USE THEREOF IN COURT;
- OBJECTIONS TO QUESTIONS AND MOTIONS TO STRIKE ANSWERS NEED NOT BE MADE DURING THE TAKING OF THIS DEPOSITION, BUT MAY BE MADE FOR THE FIRST TIME DURING THE PROGRESS OF THE TRIAL OF THIS CASE, OR AT ANY PRETRIAL HEARING HELD BEFORE ANY FEDERAL COURT JUDGE FOR THE PURPOSE OF RULING THEREON, OR AT ANY OTHER HEARING OF SAID CASE AT WHICH SAID DEPOSITION MIGHT BE USED, EXCEPT THAT AN OBJECTION AS TO THE FORM OF A QUESTION MUST BE MADE AT THE TIME SUCH QUESTION IS ASKED OR OBJECTION IS WAIVED AS TO THE FORM OF THE

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QUESTION.

5. THAT THE SIGNATURE OF THE WITNESS TO THE TRANSCRIPT OF HIS TESTIMONY IS HEREBY WAIVED.

6. EXCEPT AS WAIVED BY THESE STIPULATIONS, THE PROVISIONS OF THE FEDERAL RULES OF CIVIL PROCEDURE SHALL APPLY TO THE TAKING OF SAID DEPOSITION AND AS TO ITS SUBMISSION TO THE RESPECTIVE DEPONENT, CERTIFICATION AND FILING WITH THE APPROPRIATE NOTICING ATTORNEY.

---

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(Whereupon,  
LINDA DIAN WILSON,  
having been first duly sworn,  
was examined and testified  
as follows:)

DIRECT EXAMINATION by MR. BLADUELL:

Q. Good morning, Ms. Wilson, my name is Hector Bladuell, I'm an attorney with the U.S. Department of Justice; I represent the government in this case.

Have you been deposed before?

A. No.

Q. Okay. Well, the purpose of this deposition is for me to ask you questions about your claim so that we can understand it better, learn more about it. It's not a matter of discussing the merits of your claim, there's going to be a trial for that.

So I'm just going to ask you a series of questions. You let me know the answer if you know it. If you don't know it, you let me know. If you don't understand something I say, please let me know and I'll try to rephrase it.

Your counsel will make some objections during -- to some of my questions. Those objections are for -- to preserve them for trial. But if she

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doesn't instruct you not to answer, you can answer the question despite the objection.

We are recording this deposition.

There's going to be a transcript at the end, so you need to answer verbally instead of nodding ---

A. Okay.

Q. --- during the deposition.

A. Okay.

Q. Do you suffer any condition that would impair -- that impairs you to understand my questions today?

A. No, sir.

Q. Okay. Do you suffer any condition that would impair you to remember events that happened in the past?

A. No, sir.

Q. Any medication impairing your ability to understand my questions?

A. Certainly nothing that would impair my ability.

MS. BAUMGARDNER: If I just might add, Ms. Wilson, could you keep your voice up a little bit. You're soft-spoken ---

THE WITNESS: Oh, I'm sorry.

MS. BAUMGARDNER: --- and, also,

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Ms. Powell needs to be able to hear what you say clearly.

THE WITNESS: Ah.

MS. BAUMGARDNER: We'll try to remind you if you are a little too soft.

THE WITNESS: You're speaking our words, okay.

Q. Okay. Now, do you understand that you have taken an oath to tell the truth today?

A. Yes, sir.

Q. Okay. Do you have any other -- any questions before we begin the deposition?

A. No.

Q. Okay. Well, could you please state your full name for the record?

A. Linda Dian Wilson.

Q. And what is your association with the Sinclair Institute?

A. I'm the office manager.

Q. And as office manager, what are your duties?

A. I take care of the vendors that are involved in maintaining our property. I take care of the needs of the individuals in the office as support for what they need every day to do their job. And I am

Linda Dian Wilson - 4/3/13

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<p>1 employment after you graduated from college?</p> <p>2 A. I worked in a frame shop framing art,</p> <p>3 taking orders. I worked for a printer in Richmond,</p> <p>4 Virginia, and I was his office manager and I kept his</p> <p>5 books. And that's -- and after that, I worked for a</p> <p>6 small media company that produced dog-training videos,</p> <p>7 and I performed all of the duties to acquire them, make</p> <p>8 sure they were shipped out, and keeping the financial</p> <p>9 records. I'm not a CPA, so we had a CPA, but I did</p> <p>10 everything else, except the marketing, for that</p> <p>11 company. And I've been with Sinclair as an office</p> <p>12 manager for seven years.</p> <p>13 Q. So you've been with Sinclair since 2006;</p> <p>14 is that about right?</p> <p>15 A. 2005.</p> <p>16 Q. 2005?</p> <p>17 A. Yes, we are going on the eighth year</p> <p>18 now.</p> <p>19 Q. Okay. When you started at Sinclair,</p> <p>20 what were your duties?</p> <p>21 A. I was the office manager in a building</p> <p>22 that we did not own, so my duties were to look after</p> <p>23 the general needs of the people that worked in the</p> <p>24 office every day to make sure that they had everything</p> <p>25 they needed to do their job; get in touch with building</p>	<p>1 Millstone Drive.</p> <p>2 Q. Do you know the address?</p> <p>3 A. 402 Millstone Drive, Hillsborough 27278.</p> <p>4 Q. So were you there when -- were you at</p> <p>5 Sinclair when they moved to the new building?</p> <p>6 A. Yes, I moved us.</p> <p>7 Q. Okay. So what year was that?</p> <p>8 A. I started in August 31, 2005, and we</p> <p>9 moved in January of 2006.</p> <p>10 Q. Okay. How many people work at Sinclair?</p> <p>11 A. It does vary. There are, I believe, 18</p> <p>12 people that are Sinclair employees in our building</p> <p>13 right now.</p> <p>14 Q. Do you have people other than Sinclair</p> <p>15 people working there?</p> <p>16 A. One of the flanker companies maintains</p> <p>17 offices there and I believe there are six people</p> <p>18 working for that company.</p> <p>19 Q. What is the flanker company?</p> <p>20 A. Our business is a sister business of</p> <p>21 PHE, which is Phil Harvey Enterprises, and we have</p> <p>22 different brands and, you know, sell to different</p> <p>23 markets. And this other company is a home-party</p> <p>24 business and they maintain their offices. They rent --</p> <p>25 they basically pay us to have their offices in our</p>
Page 15	Page 17
<p>1 management if there was a problem in our office; take</p> <p>2 care of some financial reporting, basically just</p> <p>3 compiling information from reports in a form that was,</p> <p>4 you know, on one or two pages instead of pages and</p> <p>5 pages of print.</p> <p>6 I prepared for parties and for lunches</p> <p>7 for people that came from out of town.</p> <p>8 Q. Okay.</p> <p>9 A. That was in the beginning.</p> <p>10 Q. When you say you were in a building that</p> <p>11 you didn't own, do you know who owned the building?</p> <p>12 A. The name of the building was Vilcom in</p> <p>13 Chapel Hill. And since we purchased our own building</p> <p>14 within a year of my working there, so my duties</p> <p>15 changed.</p> <p>16 Q. Was that a building that rented out</p> <p>17 office space ---</p> <p>18 A. That's correct.</p> <p>19 Q. --- to a lot of different people?</p> <p>20 A. That's correct.</p> <p>21 Q. And now you are in a building that</p> <p>22 Sinclair owns?</p> <p>23 A. That's correct.</p> <p>24 Q. Where is this building?</p> <p>25 A. It's in Hillsborough, North Carolina on</p>	<p>1 building.</p> <p>2 Q. Okay. What is Phil Harvey Enterprises?</p> <p>3 A. Phil Harvey is the president of --</p> <p>4 overall, he owns the company. He started the company</p> <p>5 in the early '70s.</p> <p>6 Q. He started Phil Harvey Enterprises?</p> <p>7 A. Correct. And our brand has been around</p> <p>8 now for, you know, Sinclair Institute has been around</p> <p>9 now for 20, 25 years -- 20? Twenty (20) years, I</p> <p>10 think.</p> <p>11 Q. Is there some -- so what does Phil</p> <p>12 Harvey Enterprises do?</p> <p>13 MS. BAUMGARDNER: Objection. Just</p> <p>14 for the record, this -- none of this is in the subject</p> <p>15 matter of the -- in the Notice of Deposition we're</p> <p>16 supposed to cover. So I'll let her answer a few more</p> <p>17 questions, but I think we ought to move on.</p> <p>18 MR. BLADUELL: You can answer.</p> <p>19 A. We -- Phil Harvey Enterprises has</p> <p>20 several companies. Our relationship with them is a</p> <p>21 little different from the other companies, probably in</p> <p>22 a way that I don't fully understand. I'm not in</p> <p>23 business, you know, like an MBA, so I don't really</p> <p>24 understand business structure very well.</p> <p>25 I just know that our relationship is a</p>

5 (Pages 14 to 17)

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<p>1 little bit different in the way we pay -- Phil Harvey</p> <p>2 Enterprises consists of a warehouse and an accounting</p> <p>3 department and a legal department and we -- the</p> <p>4 marketing is done in our building for our company, and</p> <p>5 we have an agreement with Phil Harvey Enterprises to</p> <p>6 take care of our accounting and our order fulfillment,</p> <p>7 that kind of stuff.</p> <p>8 Q. Who is Phil Harvey?</p> <p>9 A. He started our company. He's a public</p> <p>10 health graduate from ---</p> <p>11 Q. When you say your company -- I'm sorry,</p> <p>12 when you say your company, you mean Sinclair?</p> <p>13 A. I believe that Phil is an officer in our</p> <p>14 company.</p> <p>15 Q. In Sinclair?</p> <p>16 A. That's right. And -- but we have a</p> <p>17 person -- he's the president of Phil Harvey</p> <p>18 Enterprises, but we have a president of Sinclair.</p> <p>19 Q. Is Sinclair owned by Phil Harvey</p> <p>20 Enterprises?</p> <p>21 A. I believe Phil is a shareholder in our</p> <p>22 company.</p> <p>23 Q. Okay. Are there -- do you know how many</p> <p>24 other shareholders there are ---</p> <p>25 A. I do not.</p>	<p>1 going to have a running objection and ask that you wrap</p> <p>2 this line of questioning up because it's not one of the</p> <p>3 designated topics.</p> <p>4 Q. You can answer.</p> <p>5 A. I don't completely understand the</p> <p>6 relationship, the full financial relationship, between</p> <p>7 Phil Harvey Enterprises and Sinclair Institute. I do</p> <p>8 know that Phil Harvey Enterprises is comprised of</p> <p>9 different brands and we started our company after</p> <p>10 recognizing that there -- that we could address an</p> <p>11 adult sexual health and education market.</p> <p>12 How we are related to PHE financially is</p> <p>13 not clear to me, but there are some facts that I know.</p> <p>14 Q. Well, other than financially, can you</p> <p>15 describe the relationship between Phil Harvey</p> <p>16 Enterprises and Sinclair?</p> <p>17 MS. BAUMGARDNER: Objection.</p> <p>18 Again, that's all in the written discovery.</p> <p>19 MR. BLADUELL: You can answer the</p> <p>20 question.</p> <p>21 A. I don't feel confident that I can give</p> <p>22 you a complete and accurate answer. It's out of my</p> <p>23 realm, it's -- it's so far out of the realm of my work,</p> <p>24 it's not something that I'm really exposed to.</p> <p>25 Q. You said there were Phil Harvey</p>
Page 19	Page 21
<p>1 Q. --- in your company?</p> <p>2 A. I do not.</p> <p>3 Q. Okay. You said that Phil Harvey</p> <p>4 Enterprises has different companies, correct?</p> <p>5 A. Uh-huh (yes).</p> <p>6 Q. One of them is -- is that correct? Yes?</p> <p>7 A. That is correct.</p> <p>8 Q. And one of his companies is Sinclair; is</p> <p>9 that right?</p> <p>10 MS. BAUMGARDNER: Would you repeat</p> <p>11 that question again?</p> <p>12 Q. One of the companies that Phil Harvey</p> <p>13 Enterprises owns is Sinclair?</p> <p>14 MS. BAUMGARDNER: Objection.</p> <p>15 A. In part, because he's a shareholder and</p> <p>16 we pay them to perform certain parts of what it takes</p> <p>17 for us to run our business. I'm not sure that I</p> <p>18 completely understand -- wow!</p> <p>19 MR. BLADUELL: I'm sorry. Just</p> <p>20 for the record, the light just went off. I'm going to</p> <p>21 stand up and try to -- it's a motion sensor.</p> <p>22 Q. I'm sorry, Ms. Wilson. The question</p> <p>23 was, does Phil Harvey Enterprise own Sinclair</p> <p>24 Institute? You can answer.</p> <p>25 MS. BAUMGARDNER: And, again, I'm</p>	<p>1 Enterprises employees in your building, correct?</p> <p>2 A. Yes.</p> <p>3 Q. Who are these employees of Phil Harvey</p> <p>4 Enterprises in your building?</p> <p>5 A. They work for one of the companies. I</p> <p>6 think I've heard the term "umbrella" used to describe</p> <p>7 PHE, and under that umbrella there are several</p> <p>8 companies and they are called flanker companies. We</p> <p>9 are called a sister company for some reason that I</p> <p>10 don't completely understand. The people that are in our</p> <p>11 building that are in the flanker company work for --</p> <p>12 they're -- they're doing business as Temptations</p> <p>13 Parties, and they're a home-party business.</p> <p>14 Q. What is a home-party business?</p> <p>15 A. It is a business not -- where there are</p> <p>16 consultants who go into people's homes that have</p> <p>17 requested the consultant to come and they invite</p> <p>18 friends and they -- it's an opportunity to do business,</p> <p>19 but it's in the home as opposed to a store front.</p> <p>20 Q. An opportunity to do -- you said an</p> <p>21 opportunity to do business at home, but what kind of</p> <p>22 business?</p> <p>23 A. Oh. It is an adult-novelty business, so</p> <p>24 we sell potions and lotions and lingerie and adult</p> <p>25 toys.</p>

6 (Pages 18 to 21)

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<p>1 Q. When you say "we," do you mean 2 Temptations? 3 A. That's correct. 4 Q. Okay. So, other than Temptation 5 employees in your building, are there other Phil Harvey 6 Enterprise employees? 7 A. We are Sinclair Institute employees. We 8 pay Phil Harvey Enterprises to take care of our 9 payroll, our accounting, our order fulfillment. I 10 believe Phil is a shareholder in our company. We share 11 information back and forth that is useful to both of 12 our companies, but I don't really think that it would 13 be correct to say that Phil Harvey is the sole owner of 14 our company because I know there are other people who 15 own shares in our company. 16 Q. Okay. Who are these people? 17 MS. BAUMGARDNER: Objection. I'm 18 going to instruct the witness not to answer any more of 19 these questions. They are not -- we are so far afield. 20 They are not designated as topics. In this we produced 21 her answer to questions about it and she is --- 22 MR. BLADUELL: Okay. I under --- 23 MS. BAUMGARDNER: --- she doesn't 24 -- she isn't qualified to give you answers on these 25 questions.</p>	<p>1 are employees at Sinclair that are shareholders. I 2 could only give you a guess as to who I believe that 3 they are because we do not discuss our financial 4 relation, our individual financial relationships, with 5 our company with each other as employees. 6 Q. So this -- the people that -- so do you 7 know their names or you don't know their names? 8 MS. BAUMGARDNER: Objection. She 9 said she didn't know who they are. 10 A. I believe I -- I believe I just answered 11 that by saying I could only make a guess --- 12 Q. Okay. 13 A. --- and I don't feel comfortable under 14 oath making guesses about questions. 15 Q. I understand that. But, I mean, we're 16 not -- are we talking about a hundred employees or are 17 we talking about five or six? 18 A. Our company, I believe, has about 18 19 employees now. 20 Q. But the ones that you said are 21 shareholders, so it's a limited number, it's like five 22 or six? 23 A. It is -- it is not everyone in our 24 building. That much I know --- 25 Q. Okay.</p>
Page 23	Page 25
<p>1 MR. BLADUELL: Okay. For the 2 record, counsel has instructed the witness not to 3 answer on relevancy grounds; is that right? 4 MS. BAUMGARDNER: No. On the fact 5 that we haven't produced this witness under Rule 30. 6 If you want me to read the rule, Rule 30(b) 5 or 6. 7 MR. BLADUELL: Are you --- 8 MS. BAUMGARDNER: We produced her, 9 not on relevance --- 10 MR. BLADUELL: Counsel -- counsel 11 -- so, okay, so are you instructing the witness not to 12 answer on a privilege ground? 13 MS. BAUMGARDNER: No. 14 MR. BLADUELL: Then the instruction 15 not to answer is not proper. I represent to you that 16 it's not a privilege; you can answer the question, so I 17 ask you to answer the question, Ms. Wilson. 18 THE WITNESS: Could you repeat the 19 exact question you'd like me to answer? 20 MR. BLADUELL: Sure. I'm sorry. 21 Can we have the court reporter read it back? 22 (Question read back.) 23 MS. BAUMGARDNER: You can answer 24 if you know. 25 A. I don't know that, but I know that there</p>	<p>1 A. --- because I am not a shareholder. 2 Q. Okay. Now, you said that Phil Harvey 3 Enterprises has different companies, correct? One of 4 them is Temptations, which is in your building. What 5 other companies does Phil Harvey own? 6 MS. BAUMGARDNER: Objection. 7 Q. Phil Harvey Enterprises. 8 MS. BAUMGARDNER: Objection. 9 A. Do I answer? 10 Q. Yeah, you can answer. It's not an 11 instruction. 12 MS. BAUMGARDNER: If you know. 13 A. Adam &amp; Eve. 14 Q. And what do they do? 15 A. They are --- 16 MS. BAUMGARDNER: Objection. Go 17 ahead and answer. 18 A. They are an adult novelty business, like 19 entertainment and novelty. So they sell adult toys, 20 they sell lingerie, they sell films. 21 Q. Okay. Are there Adam &amp; Eve employees in 22 your building? 23 MS. BAUMGARDNER: Objection. 24 A. No. 25 Q. Okay. So what -- what -- so Adam &amp; Eve</p>

7 (Pages 22 to 25)



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<p>1 both companies adhere to. It's very important to us --</p> <p>2 Phil Harvey was a public health person, and that is how</p> <p>3 he got into this business.</p> <p>4 It's very important to us that</p> <p>5 everything that we do meet these standards. So in that</p> <p>6 sense they are similar.</p> <p>7 They are different in that we are</p> <p>8 selling to a different adult market. Our adult market</p> <p>9 is people who may have problems because of their</p> <p>10 health, people who may lack information about healthy</p> <p>11 sexual relationships among adults.</p> <p>12 We have experts in our films that are</p> <p>13 sexual education -- they're educators and researchers,</p> <p>14 therapists, because we -- our market is people who are</p> <p>15 looking for certain advice in a more clinical, I would</p> <p>16 say, way.</p> <p>17 The things -- the titles that Adam &amp; Eve</p> <p>18 produce are more, I would say, adult entertainment</p> <p>19 without that, you know, like they probably would not</p> <p>20 have an expert speaking on camera in their film. In</p> <p>21 this way they are different.</p> <p>22 Q. Okay. When you say, "adult</p> <p>23 entertainment," is that -- is it -- do I understand</p> <p>24 correctly that you're making a distinction between that</p> <p>25 adult entertainment and what Sinclair produces?</p>	<p>1 Q. Oral, oral sex?</p> <p>2 A. Probably.</p> <p>3 Q. And do you have that same content in the</p> <p>4 Sinclair videos?</p> <p>5 A. Yes.</p> <p>6 Q. Have you met Mr. Phil Harvey?</p> <p>7 MS. BAUMGARDNER: Objection.</p> <p>8 A. Yes. Yes.</p> <p>9 Q. When did you meet him?</p> <p>10 A. He -- we have a -- Phil Harvey has</p> <p>11 another interest called DKT International. He spends</p> <p>12 about half of his time, or maybe more, traveling around</p> <p>13 the world helping more impoverished areas learn about</p> <p>14 how to prevent sexually transmitted disease, how to</p> <p>15 prevent unwanted pregnancy because, like I said, he's a</p> <p>16 public health person, that, that's his interest.</p> <p>17 A portion of the profits of all of the</p> <p>18 companies go to support DKT International.</p> <p>19 So he's not in Hillsborough all the</p> <p>20 time, but he does keep office hours and he comes and he</p> <p>21 attends some of our monthly employee meetings, and he</p> <p>22 comes to our Christmas parties, and frequently consults</p> <p>23 with different members of the company who have</p> <p>24 questions that his experience might, you know, be</p> <p>25 needed about the marketing that we do and that kind of</p>
Page 31	Page 33
<p>1 MS. BAUMGARDNER: Objection.</p> <p>2 A. There are some distinctions because we</p> <p>3 specifically have experts who are educators and</p> <p>4 clinicians in our films. It gives our films a</p> <p>5 different look, I think, a different tone because we</p> <p>6 are selling to a different adult market.</p> <p>7 Q. But when you say that the Adam &amp; Eve</p> <p>8 productions are adult entertainment, what do you mean</p> <p>9 by that?</p> <p>10 A. They are films that are produced to</p> <p>11 enhance the mature sexual lives and experiences of</p> <p>12 adults who may not feel like they need to speak -- they</p> <p>13 need to have an expert speaking to them on film. They</p> <p>14 are just people like the people that view the films,</p> <p>15 adults, adults that view the films.</p> <p>16 Q. Would those films -- are those films</p> <p>17 pornography?</p> <p>18 MS. BAUMGARDNER: Objection.</p> <p>19 Q. The films from Adam &amp; Eve?</p> <p>20 A. Could you define pornography?</p> <p>21 Q. Sexual -- sexually explicit images,</p> <p>22 intercourse ---</p> <p>23 A. Yes.</p> <p>24 Q. --- display of genitals?</p> <p>25 A. Yes.</p>	<p>1 thing.</p> <p>2 Q. Is it accurate to say you've seen him</p> <p>3 more than ten times?</p> <p>4 A. Yes.</p> <p>5 Q. And you've talked to him more than ten</p> <p>6 times?</p> <p>7 A. I don't think I've talked to him more</p> <p>8 than ten times.</p> <p>9 Q. Five times?</p> <p>10 A. I've sent him thank you notes for what</p> <p>11 he does and who he is and -- but I don't talk to him</p> <p>12 much.</p> <p>13 Q. Have you had work interactions with Mr.</p> <p>14 Phil Harvey?</p> <p>15 A. No, not really, like we don't work</p> <p>16 together.</p> <p>17 Q. But he comes to the Sinclair building,</p> <p>18 correct?</p> <p>19 A. And speaks with our producer and our</p> <p>20 president.</p> <p>21 Q. Does he have an office in the Sinclair</p> <p>22 building?</p> <p>23 A. No.</p> <p>24 Q. Okay. You say he speaks to your</p> <p>25 producers -- producer; is that right?</p>

9 (Pages 30 to 33)



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<p>1 A. That's correct.</p> <p>2 Q. Who is your producer?</p> <p>3 A. Kathy Brummitt.</p> <p>4 Q. And what is her job?</p> <p>5 A. She was the first Sinclair employee; and</p> <p>6 her job, until recently, was to oversee the production</p> <p>7 of our proprietary video, the video that we produce.</p> <p>8 Q. Sexually explicit videos?</p> <p>9 A. And non-sexually explicit videos.</p> <p>10 Q. Okay.</p> <p>11 A. Now she is -- we're in a bit of a</p> <p>12 transition in our company and we're looking at</p> <p>13 different ways to achieve what we do, and she is now</p> <p>14 the head of new customer acquisition. But she probably</p> <p>15 still maintains the title of head of production. We</p> <p>16 are not in production right now, so.</p> <p>17 Q. Okay. About how often do you see that</p> <p>18 Ms. Kathy -- I'm sorry, what -- what was her last name?</p> <p>19 A. Brummitt.</p> <p>20 Q. So how often do you see Kathy Brummitt</p> <p>21 talk to Phil Harvey?</p> <p>22 MS. BAUMGARDNER: Objection.</p> <p>23 A. Maybe three times a year.</p> <p>24 Q. Okay. And you said that Phil Harvey</p> <p>25 also comes to Sinclair to talk to other employees; is</p>	<p>1 A. Kathy works with -- do you want me to</p> <p>2 say their names?</p> <p>3 Q. Sure. Yes, please.</p> <p>4 A. Betsey Grondy, who helps with new</p> <p>5 customer acquisition. Rebecca Cook, who is the head of</p> <p>6 our wholesale division. She works with Donica McClean</p> <p>7 -- I'm sorry, she's married now, Donica Reardon, and</p> <p>8 Brittany Cox.</p> <p>9 Q. Are these, Brittany Cox and Donica, are</p> <p>10 also employees of Sinclair?</p> <p>11 A. Correct, in the wholesale division.</p> <p>12 Our Senior Buyer is Wayne Johnson. He</p> <p>13 works on catalog with George Campbell.</p> <p>14 The person that does our e-mail</p> <p>15 marketing is Rick Miller.</p> <p>16 The head of our website is David Allen.</p> <p>17 We have four graphic artists. Their</p> <p>18 names are Doris Rudd, Clark Gimenez, Sarah Wilson and</p> <p>19 Meredith Pratt.</p> <p>20 Q. Okay. Is that all? Oh, I'm sorry.</p> <p>21 A. We have Alan Julich, who works in -- he</p> <p>22 works on our web team helping with the duties of the</p> <p>23 website.</p> <p>24 Jesse Sirbaugh also works on our web</p> <p>25 team.</p>
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<p>1 that right?</p> <p>2 A. He comes to meet with our president.</p> <p>3 Q. And who is your president?</p> <p>4 A. Patrick Smith.</p> <p>5 Q. Okay. So how often does he meet with</p> <p>6 your president?</p> <p>7 MS. BAUMGARDNER: Objection.</p> <p>8 A. I believe he has -- in our building,</p> <p>9 which would be the meetings that I would know about, I</p> <p>10 think Phil may have been there three times in the past</p> <p>11 year and a half to visit with Patrick, maybe a little</p> <p>12 more. I'm -- I'm uncertain.</p> <p>13 Q. Okay. So the Sinclair Institute has a</p> <p>14 president, correct?</p> <p>15 A. A president? Yes.</p> <p>16 Q. And this president -- his name is? You</p> <p>17 just said it's Patrick.</p> <p>18 A. Patrick Smith.</p> <p>19 Q. And has a director of production, Ms.</p> <p>20 Kathy Burmitt?</p> <p>21 A. Brummitt.</p> <p>22 Q. Brummitt?</p> <p>23 A. Uh-huh (yes).</p> <p>24 Q. Who are the rest of the employees at</p> <p>25 Sinclair?</p>	<p>1 Maureen Castro is -- she sort of heads</p> <p>2 up the organization of the duties of the web team.</p> <p>3 Q. Okay. But for the -- for the leadership</p> <p>4 of Sinclair, who would you say that is, Patrick?</p> <p>5 A. Patrick Smith.</p> <p>6 Q. And who else?</p> <p>7 MS. BAUMGARDNER: Objection.</p> <p>8 A. I would say Patrick.</p> <p>9 Q. Is there a vice president?</p> <p>10 MS. BAUMGARDNER: Objection.</p> <p>11 A. I'm not aware of a vice president.</p> <p>12 Q. Is there ---</p> <p>13 A. If there is, I just don't know what it</p> <p>14 is.</p> <p>15 Q. Okay. Is there a Chief Financial</p> <p>16 Officer?</p> <p>17 MS. BAUMGARDNER: Objection.</p> <p>18 A. No. Our accounting department, I</p> <p>19 suppose would be.</p> <p>20 Q. So who's the head of the accounting</p> <p>21 department?</p> <p>22 A. Ginger Stallings, but she is not a</p> <p>23 Sinclair employee.</p> <p>24 Q. Where does she work?</p> <p>25 A. She works at PHE.</p>

10 (Pages 34 to 37)

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<p>1 Q. Okay. Have you worked for any other 2 company under the umbrella of PHE that is not Sinclair? 3 MS. BAUMGARDNER: Objection. 4 A. No. 5 Q. What is Townsend Enterprises? 6 A. That is the legal name of our business. 7 We do business as Sinclair Institute, but Townsend 8 Enterprises is the name on our business license. 9 Q. So Townsend Enterprises and Sinclair are 10 the same thing? 11 A. That is correct. 12 Q. Townsend Enterprises is not a different 13 entity? 14 A. Correct. 15 Q. Okay. So let's say that Sinclair 16 Enterprises is going to do a film, sexually explicit 17 film, could you walk me through your involvement in the 18 production of that film? 19 A. Once the film is complete, I process the 20 paperwork involved that is a part of keeping 2257 21 records. I maintain copies of the IDs of everyone in 22 the film, including the people that are in the building 23 working that are not actually performers in the film. 24 So everyone that is involved in the 25 production, we keep their ID. In other words, this is</p>	<p>1 doubt it. 2 Q. Okay. Okay. So, they are filming this 3 movie and how do you get the copies of the IDs? 4 A. They take a picture of the performer 5 holding their ID. 6 Q. And is this picture taken in California? 7 A. Correct. 8 Q. Okay. 9 A. At the date of the, you know, first date 10 of production. 11 Q. Is there someone from Sinclair at this 12 production? 13 A. Yes. 14 Q. And who is that? 15 A. Kathy Brummitt. 16 Q. And does she take -- is she the one 17 taking the pictures of the IDs? 18 A. I don't know who takes the pictures. 19 Q. Okay. So someone takes the pictures of 20 the IDs, then gives this picture to Ms. Brummitt [sic]? 21 A. Brummitt. 22 Q. Brummitt, I'm sorry, Brummitt. Correct? 23 A. To my knowledge, I mean --- 24 Q. Yes, to your -- as far as you know? 25 A. Yes. It's like they sign model</p>
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<p>1 all happening, you know, our films are all -- everyone 2 on the crew is an adult, the performers are all adults. 3 Q. Just for clarification, the performers, 4 is -- is -- do the performers film the movie at the 5 offices of Sinclair? 6 A. No. 7 Q. There's a studio where this production 8 happens? 9 A. Takes place in a studio. 10 Q. And where is this studio? 11 A. In California. 12 Q. Okay. So no productions take place in 13 North Carolina? 14 A. Nothing above and beyond maybe a 15 product demo/video that would just show a product in 16 someone's hand or something like that. 17 Q. Okay. Now this studio in California, is 18 it owned by Sinclair? 19 A. No. 20 Q. Who owns this studio? 21 A. I have no idea. 22 Q. Do you -- it is owned by PHE 23 Enterprises? 24 MS. BAUMGARDNER: Objection. 25 A. I have no idea, and I would tend to</p>	<p>1 releases, they have their picture taken with their ID, 2 and all of this happens, you know, that's -- that -- 3 wow! It's almost like it cuts off if we're not moving. 4 MR. BLADUELL: Yeah, it's going to 5 happen. 6 MS. BAUMGARDNER: Yeah, it's a 7 motion detector so that's why you have to get up. 8 MR. BLADUELL: For the record, the 9 light went off again. They're sending us a message. 10 So you can continue. 11 THE WITNESS: I have never been at 12 a Sinclair Institute production. 13 Q. Okay. So Ms. Brummitt collects the IDs 14 and the model releases, and does she send them to you 15 by e-mail? 16 A. No. 17 Q. By mail? 18 A. No. 19 Q. She brings them from California to North 20 Carolina? 21 A. That's correct. 22 Q. Okay. Does -- is Ms. Brummitt -- does 23 Ms. Brummitt do this--taking IDs and model 24 releases--for other companies that are part of the 25 umbrella of Phil Harvey Enterprises?</p>

12 (Pages 42 to 45)

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<p>1 MS. BAUMGARDNER: Objection.</p> <p>2 A. I really feel like that without a</p> <p>3 calculator and sitting down and writing all this stuff</p> <p>4 down that I couldn't give you an accurate answer.</p> <p>5 Q. Okay. All right.</p> <p>6 A. I am under oath.</p> <p>7 Q. Yes. And nothing bad is going to happen</p> <p>8 if you give us a reasonable estimate based on your</p> <p>9 knowledge of the process.</p> <p>10 So, you know, would you say that that</p> <p>11 process of just the cross-referencing, typing up the</p> <p>12 bar codes would take, in between the time that you</p> <p>13 spent on it and the time that the graphic artists spend</p> <p>14 on it, would you say it would take up to an hour?</p> <p>15 MS. BAUMGARDNER: Objection.</p> <p>16 A. When all is said and done, yeah -- yes.</p> <p>17 Q. And it could take less than an hour?</p> <p>18 A. Well, there are a certain number of</p> <p>19 things that we have to do with everything, so one image</p> <p>20 wouldn't take any less or any more, really, unless our</p> <p>21 equipment isn't operating properly.</p> <p>22 Q. Okay.</p> <p>23 A. You know, we have to sit and wait for</p> <p>24 these circles to go around on this screen while the</p> <p>25 images upload; and once they're uploaded, they get a</p>	<p>1 have discussions with my co-workers, for example.</p> <p>2 Q. You don't recruit the individuals</p> <p>3 appearing in your, in Sinclair, videos, correct?</p> <p>4 A. Me?</p> <p>5 Q. Yes.</p> <p>6 A. No.</p> <p>7 Q. Who does that recruiting?</p> <p>8 A. That would be Kathy Brummitt, or it</p> <p>9 could be a director might be involved in the process,</p> <p>10 but I don't have that knowledge because I'm not on site</p> <p>11 when -- or in offices when all of that stuff is going</p> <p>12 on.</p> <p>13 But I would say the person ultimately</p> <p>14 responsible is Kathy Brummitt, and she's been -- she's</p> <p>15 been with our company 30 years. She was the first</p> <p>16 employee of Sinclair, so she knows this industry. And</p> <p>17 we frequently use the same people in our -- because</p> <p>18 they're familiar with working with us and we're</p> <p>19 familiar with working with them.</p> <p>20 And so, you know, how one particular</p> <p>21 actor was discovered as a person that we would like to</p> <p>22 be in our film in the very beginning, I wouldn't have</p> <p>23 any knowledge of that at all, but I know that she would</p> <p>24 maybe be the one that would contact, you know, the</p> <p>25 agency that they work for or them directly depending on</p>
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<p>1 bar code, you know. That -- it could be more than an</p> <p>2 hour if our ---</p> <p>3 Q. If there's something wrong.</p> <p>4 A. --- server is ---</p> <p>5 Q. Right.</p> <p>6 A. --- there could be something wrong,</p> <p>7 yeah. I mean, you know, there are sort of these</p> <p>8 aggravating parts of this that are necessary for --</p> <p>9 because of keeping the records and the best available</p> <p>10 technology, you know, that we have that we can afford,</p> <p>11 you know, is not -- is not perfect.</p> <p>12 Q. Okay.</p> <p>13 A. That -- and I guess, just knowing all of</p> <p>14 that it makes it difficult for me to tell you exactly</p> <p>15 how long I feel like this takes. I really just know</p> <p>16 about how much of my job is dedicated to this, and ---</p> <p>17 Q. Which is?</p> <p>18 A. --- which is about half.</p> <p>19 Q. Half of it, 20 hours a week?</p> <p>20 A. (Indicates.)</p> <p>21 Q. Okay.</p> <p>22 A. I know the other stuff -- and that's</p> <p>23 just based on all of the other stuff that I do and</p> <p>24 about how easy I know my job used to be before I</p> <p>25 started doing this. I used to have a lot more time to</p>	<p>1 how their relationship is set up.</p> <p>2 Q. So the individuals that are depicted in</p> <p>3 Sinclair videos have agencies representing them?</p> <p>4 A. I -- I -- I don't have any knowledge of</p> <p>5 that.</p> <p>6 Q. Okay.</p> <p>7 A. I'm just thinking, you know, people who</p> <p>8 are in films typically work through agencies, but I</p> <p>9 don't have any -- I can't answer that.</p> <p>10 Q. Okay. And who do you report to in your</p> <p>11 work?</p> <p>12 A. Patrick Smith.</p> <p>13 Q. Patrick Smith.</p> <p>14 And who does Patrick report to?</p> <p>15 A. The -- he reports to Phil Harvey and</p> <p>16 David Groves. I believe David Groves is considered</p> <p>17 the CEO at PHE.</p> <p>18 Q. I'm sorry, you said David?</p> <p>19 A. Groves.</p> <p>20 Q. Who is David Groves?</p> <p>21 A. I believe he is the CEO of PHE.</p> <p>22 Q. Okay. I'm sorry, you said that, I did</p> <p>23 not get it. CEO of PHE.</p> <p>24 So Phil Harvey is not the CFO of PHE?</p> <p>25 A. Well, you just said CFO.</p>

24 (Pages 90 to 93)

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<p>1 Q. I'm sorry, CEO. The CEO of PHE is David 2 Groves?</p> <p>3 A. I believe Phil Harvey is considered the 4 president ---</p> <p>5 Q. Okay.</p> <p>6 A. --- and principal owner of PHE. And 7 David Groves is the CEO of PHE.</p> <p>8 Q. Owner. All right. Does PHE own 9 Sinclair?</p> <p>10 MS. BAUMGARDNER: Objection.</p> <p>11 A. I don't completely understand the 12 financial relationship, once again, between PHE and 13 Sinclair. I believe Phil Harvey is a shareholder in 14 Sinclair.</p> <p>15 Q. Okay.</p> <p>16 A. I know that our relationship -- among 17 the companies that are associated with PHE, I believe 18 our relationship is unique among those companies, and 19 that we are not considered a flanker company, but a 20 sister company. Whatever that means to people in 21 business. I'm not really sure what it means.</p> <p>22 Q. Okay. Do you know the year that the 23 Sinclair Institute was founded?</p> <p>24 A. That shouldn't be too hard. I want to 25 say 1993.</p>	<p>1 producer of the Wicked features, as well?</p> <p>2 A. Yes.</p> <p>3 Q. So, of the films that you decide to sell 4 on your website, you would be considered a secondary 5 producer for those films?</p> <p>6 A. Yes, unless they were proprietary, and 7 then we are the primary producer of those films.</p> <p>8 MR. BLADUELL: Okay.</p> <p>9 THE WITNESS: Can I go to the 10 restroom?</p> <p>11 MR. BLADUELL: Yes, we can have a 12 break. I was about to ask you that, but I saw that we 13 were close to lunch time, but why don't we have a 14 break, I can use it, too. Then we will be back here in 15 like in ten minutes?</p> <p>16 MS. BAUMGARDNER: Or less.</p> <p>17 MR. BLADUELL: Or less. Okay. (Recess 11:09 a.m. - 11:14 a.m.)</p> <p>18 Q. (BY MR. BLADUELL) Ms. Wilson, the 19 Sinclair Institute has a website called 20 sinclairinstitute.com; is that correct?</p> <p>21 A. That's correct.</p> <p>22 Q. And it also manages a website called 23 bettersex.com?</p> <p>24 A. That's correct.</p>
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<p>1 Q. Okay. And who founded the Sinclair 2 Institute?</p> <p>3 A. It was an out -- employee -- Kathy 4 Brummitt was working for PHE ---</p> <p>5 Q. Okay.</p> <p>6 A. --- and I think that somehow they 7 decided we're going to have another company to market 8 to another demographic and it's going to have a 9 different brand and a different purpose. And I know 10 that the people that made Sinclair were PHE employees. 11 How the business was structured is something I don't 12 understand.</p> <p>13 Q. Okay. Now, you said that Sinclair sells 14 Adam &amp; Eve pictures, correct?</p> <p>15 MS. BAUMGARDNER: Objection.</p> <p>16 A. We have -- we buy Adam &amp; Eve productions 17 and sell them in our catalog and on our website, in 18 addition to our own -- they are another 19 non-proprietary, basically, company that we purchased 20 and, you know?</p> <p>21 Q. Are you a secondary producer of those 22 materials?</p> <p>23 A. We would be considered a secondary 24 producer, yes.</p> <p>25 Q. Would you be considered a secondary</p>	<p>1 Q. What is the relationship between 2 Sinclair and the "Better Sex" website?</p> <p>3 A. The better -- the Sinclair Institute 4 website is designed to have more content related to 5 things that would help sexual, adult sexual, health 6 therapists identify products that their patients may be 7 interested in, or their clients may be interested in.</p> <p>8 It has more information that a person 9 unfamiliar with the kinds of materials that we sell 10 could identify what would best help them or be the best 11 product for them to buy.</p> <p>12 It contains articles about sexual health 13 and adult sexual health and adult sexual education.</p> <p>14 We try to provide information to go 15 along with the products that we sell on 16 sinclairinstitute.com because we know that there is a 17 market of -- who -- who need this information.</p> <p>18 The "Better Sex" website is not quite as 19 concerned with -- it -- the "Better Sex" website would 20 be for people more familiar with the kinds of products 21 that we sell.</p> <p>22 So it is -- there is not as much written 23 content. Of course, there are descriptions of what we 24 sell, but what I feel like is different is that there 25 is not as much to read, to educate yourself by reading,</p>

25 (Pages 94 to 97)

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<p>1 A. I could -- I could tell you this: If we 2 sold that film, I know she would be -- I would know 3 exactly how old she was because I would have her ID. 4 Q. Okay. So the ID gives you the -- the 5 ID tells you the exact age? 6 A. Yeah. 7 Q. Okay. But just looking at that picture, 8 can you tell the exact age --- 9 MS. BAUMGARDNER: Objection. 10 Q. --- of that person depicted? 11 A. She just looks like an adult woman 12 younger than I am, and I'm 50 years old. 13 Q. But the exact age? I mean, it's a yes 14 or no question; can you tell the exact age? 15 A. I cannot tell the exact age. 16 Q. Okay. And that woman that's on Page 1 17 in the banner is on Page 2 of Exhibit Number 4, 18 correct? 19 A. Page 1 of the banner and Page 2 of 20 Exhibit Number 4, okay. 21 Q. All right. Is the same one? 22 A. It appears to be, yes. 23 Q. Okay. And the three titles, "Erotic 24 Stories Trilogy," "Recipe for Romance" and "A Little 25 Part of Me," that are on Page 1 are on Page 2?</p>	<p>1 documents for. 2 Q. Okay. Now I'm going to show you another 3 document. I'm going to mark it as Exhibit Number 5. 4 I'm going to provide you with a copy, and I'm going to 5 provide a copy to your counsel. 6 Now Exhibit Number 5, do you see you on 7 top on the left-hand corner that it has a web address? 8 (Defendant's Wilson Deposition 9 Exhibit Number 5 Marked.) 10 A. I do. 11 Q. And it says "http"? 12 A. With no "S." 13 Q. With no "S," colon, forward slash, 14 forward slash, www.sinclairinstitute.com? 15 A. I see that. 16 Q. Okay. www.sinclairinstitute.com is the 17 website for the Sinclair Institute? 18 A. That is correct. 19 Q. Okay. And below that we have the same 20 logo, Sinclair Institute, that appears on Exhibits 2 21 and 4? 22 A. That is correct. 23 Q. And the same phone number? 24 A. That is correct. 25 Q. And the same tabs, "adult sex</p>
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<p>1 A. That is right. 2 Q. Okay. And below those titles are other 3 titles, correct? 4 A. Correct. 5 Q. There are nine titles on the second page 6 of Exhibit Number 4? 7 A. They're actually ten because "Portrait 8 of a Call Girl" is also a title --- 9 Q. Okay. So that's a banner --- 10 A. Yes. 11 Q. --- that we've been talking about? 12 A. Yes. But there are nine titles there 13 underneath the banner title that I see, yes. 14 Q. Okay. And do you recognize any of these 15 titles as titles that Sinclair sells? 16 A. Yes. The "Better Sex" -- "The Best of 17 the Better Sex Collection" is a proprietary title, and 18 I believe I distinctly remember processing the 2257 19 documents for -- for some reason "Recipe for Romance" 20 is escaping me; but, as you see, there's another film 21 here called, "A Little Romance," and then another one 22 has "Romance" written real big across the front of it, 23 but I recognize them as titles -- most of these 24 specifically as titles that I remember in recent, you 25 know, in recent time as having processed the 2257</p>	<p>1 education," "adult movies," "sex toys," "lubes and 2 accessories," "new on sale," "sexual health articles"? 3 A. Yes. 4 Q. Now, there is a search box on top of 5 those titles and there is a word typed in there and the 6 word is "Young"? 7 A. That's correct. 8 Q. And below the titles it says, "Home&gt; 9 Search Results For: Young"? 10 A. Yes. 11 Q. Okay. In this -- the first page of 12 Exhibit 5, there are three titles, correct? 13 A. That's right. 14 Q. "The Best of Nina Hartley 3" --- 15 A. Uh-huh (yes). 16 Q. --- "Girls Wanting Girls" --- 17 A. That's right. 18 Q. --- and "Teach Me"? 19 A. That's correct. 20 Q. Are you familiar with these titles? 21 A. I am. 22 Q. What can you tell me -- how are you 23 familiar? 24 A. Well, Nina Hartley was -- she's been in 25 the business a very, very long time--I think Nina was a</p>

33 (Pages 126 to 129)



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<p>1 for a Lifetime Volume 1" are proprietary titles. And</p> <p>2 the other two are non-proprietary titles, but I'm</p> <p>3 familiar with them.</p> <p>4 Q. And those are "My Girlfriend's Mother"?</p> <p>5 A. Yes.</p> <p>6 Q. And "British MILFs"?</p> <p>7 A. Yep. Yes.</p> <p>8 Q. Okay. Now, let's go back to the ones</p> <p>9 that -- "Teach Me", on the first page.</p> <p>10 A. Uh-huh (yes).</p> <p>11 Q. You said that you processed 2257</p> <p>12 documents for that?</p> <p>13 A. Pretty sure I did. I know I sent it out</p> <p>14 for review ---</p> <p>15 Q. Okay.</p> <p>16 A. --- because they are recent.</p> <p>17 Q. And are you familiar with the content of</p> <p>18 that film?</p> <p>19 A. I have not seen the film, no.</p> <p>20 Q. Okay.</p> <p>21 A. Only the images associated with the</p> <p>22 marketing of the film.</p> <p>23 Q. And what does the images tell you about</p> <p>24 the marketing of the film?</p> <p>25 A. Do you mean you want me to explain what</p>	<p>1 for the Sinclair Institute?</p> <p>2 (Defendant's Wilson Deposition</p> <p>3 Exhibit Number 6 Marked.)</p> <p>4 A. You mean at the bottom of the page right</p> <p>5 here?</p> <p>6 Q. Yes.</p> <p>7 A. Yes, I do.</p> <p>8 Q. And do you see on top that it's "Teach</p> <p>9 Me"?</p> <p>10 A. Yes.</p> <p>11 Q. The name of the title that appears on</p> <p>12 Exhibit Number 5, right?</p> <p>13 A. Yes.</p> <p>14 Q. And then "Adult DVDs," and then it says,</p> <p>15 "Lesbian"?</p> <p>16 A. Yes.</p> <p>17 Q. "Lesbian" would be the category of the</p> <p>18 DVD under which "Teach Me" is at or sold?</p> <p>19 A. That's right.</p> <p>20 Q. Then -- now from this image, which is a</p> <p>21 little bigger than the one in Exhibit Number 5, can you</p> <p>22 tell if someone is -- it depicts two women, correct?</p> <p>23 A. That is correct.</p> <p>24 Q. And is one older than the other?</p> <p>25 A. I'm reading the copy that was written</p>
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<p>1 I think the film is about just by looking at the</p> <p>2 images?</p> <p>3 Q. Yes.</p> <p>4 MS. BAUMGARDNER: Objection.</p> <p>5 A. I think that it is -- it looks like --</p> <p>6 on "Teach Me," there are two people on the front cover,</p> <p>7 and I would think that that particular film may be</p> <p>8 about one person teaching another person certain</p> <p>9 techniques. And some people find that -- some adults</p> <p>10 find that visually stimulating and -- and ---</p> <p>11 Q. Sexual techniques, you mean?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. Is one person older than the</p> <p>14 other?</p> <p>15 A. It's hard to tell.</p> <p>16 Q. Okay. I'm going to mark another</p> <p>17 exhibit, Exhibit Number 6.</p> <p>18 A. Do you have the IDs for these people?</p> <p>19 Some of these images would require you if you ---</p> <p>20 Q. I don't.</p> <p>21 I'm going to hand Exhibit Number 6 to --</p> <p>22 a copy of Exhibit Number 6 to counsel. I'm going to</p> <p>23 hand an Exhibit to the witness and I keep a copy.</p> <p>24 Can you tell me -- do you see in this</p> <p>25 Exhibit Number 6 at the bottom that it has an address</p>	<p>1 for this film.</p> <p>2 Q. Oh, okay, but just from the film, from</p> <p>3 the cover?</p> <p>4 A. From the picture, can I tell that one is</p> <p>5 -- can I accurately say that one of these people is</p> <p>6 older than the other one? No.</p> <p>7 Q. Okay. Now, if you read down, it says --</p> <p>8 the description for this film, it says, "Drop dead</p> <p>9 gorgeous cougars school nubile newbies in the art of</p> <p>10 lesbian love! Legendary Julia Ann demonstrates</p> <p>11 cunnilingus on young 18 plus lover Jessie, bringing the</p> <p>12 girl next door to pulsating climax. Freckled redhead</p> <p>13 Darla Crane teaches adorable coed Allie the pleasures</p> <p>14 of her G-spot, with each woman taking a turn as</p> <p>15 ecstatic guinea pig. During a sweaty session, busty</p> <p>16 Lisa Ann introduces innocent Jana to the thrills of 69,</p> <p>17 with provocative interviews and scorching bonus</p> <p>18 features!"</p> <p>19 A. Yes.</p> <p>20 Q. Did I read that accurately?</p> <p>21 A. You did.</p> <p>22 Q. Okay. From that description, is it</p> <p>23 reasonable to say that one of the -- in the first</p> <p>24 sentence, one of the artists or performers, let's say,</p> <p>25 is much older than the other one?</p>

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<p>1 A. Well, because it says, "legendary," that</p> <p>2 makes me think that the person who is Julia Ann, even</p> <p>3 if I didn't know who Julia Ann is, and I do, that would</p> <p>4 make me assume that that person was older than her</p> <p>5 lover, Jessie.</p> <p>6 Q. Is Julia Ann depicted in the picture?</p> <p>7 A. Julia Ann is the one, I believe, the one</p> <p>8 that is more facing -- more blonde ---</p> <p>9 Q. Okay.</p> <p>10 A. --- kind of facing the ---</p> <p>11 Q. Okay. And that's the cougar?</p> <p>12 MS. BAUMGARDNER: Objection.</p> <p>13 A. I believe the word, "cougar" indicates a</p> <p>14 woman that is ---</p> <p>15 Q. Applied to Julia Ann?</p> <p>16 A. I think Sarah Palin was considered a</p> <p>17 cougar.</p> <p>18 Q. But in this context, it is a word used</p> <p>19 to describe Julia Ann?</p> <p>20 A. Yes.</p> <p>21 Q. And the young one, Jessie, is that -- do</p> <p>22 you know if that's the one depicted here?</p> <p>23 A. I do not know that.</p> <p>24 Q. Okay. But it says that she's young?</p> <p>25 A. Yes. Eighteen (18) plus is what it</p>	<p>1 terms where they are used -- you know, we had nothing</p> <p>2 to do with the production of the video.</p> <p>3 Q. Uh-huh (yes).</p> <p>4 A. But, you know?</p> <p>5 Q. Do you know who produced this one?</p> <p>6 A. I believe that -- I want to say this</p> <p>7 might be a "New Sensations" video, but I'm not totally</p> <p>8 sure. It's hard for me to read the -- it's hard for me</p> <p>9 to read, you know, what the letters -- what the words</p> <p>10 say that are on the package.</p> <p>11 Q. Okay.</p> <p>12 A. But I would know if it were in front of</p> <p>13 me because I could read it and it would be a part of</p> <p>14 all of the records that are kept.</p> <p>15 Q. Now, the lover Jessie, it says that</p> <p>16 she's 18-plus, right?</p> <p>17 A. Which is still legal, I believe, right?</p> <p>18 Yes, it does say that.</p> <p>19 Q. Do you think it's -- what do you think</p> <p>20 -- is it legal, 18-plus?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. And -- but it doesn't say her</p> <p>23 exact age, correct?</p> <p>24 A. No, it doesn't.</p> <p>25 Q. So you wouldn't -- and assuming that</p>
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<p>1 says.</p> <p>2 Q. Okay. Now, there's -- besides a scene</p> <p>3 between these two, there is also in this -- from the</p> <p>4 description of the video, the description describes</p> <p>5 another scene between "Darla Crane teaches adorable</p> <p>6 coed Allie," correct?</p> <p>7 A. That's right.</p> <p>8 Q. Do you know what the term, "coed" means?</p> <p>9 A. Yes.</p> <p>10 Q. What does it mean?</p> <p>11 A. To me, it means someone who goes to a</p> <p>12 university with males and females allowed to go to the</p> <p>13 university.</p> <p>14 Q. A student or a professor?</p> <p>15 A. A student.</p> <p>16 Q. Okay. And Sinclair -- the Sinclair</p> <p>17 Institute is a secondary producer of the image ---</p> <p>18 A. That's correct.</p> <p>19 Q. --- that's on the website?</p> <p>20 A. Uh-huh (yes).</p> <p>21 Q. You don't consider yourself a secondary</p> <p>22 producer of the actual content of the video?</p> <p>23 A. That's correct.</p> <p>24 Q. Okay.</p> <p>25 A. The way that I understand those two</p>	<p>1 Jessie is the one depicted here, you would not know her</p> <p>2 exact age by just looking at the picture, correct?</p> <p>3 A. That is correct.</p> <p>4 Q. You would need an ID to know her exact</p> <p>5 age?</p> <p>6 A. I would have her ID with her 2257 stuff</p> <p>7 if I were the, you know?</p> <p>8 Q. But, yes or no, would you need her ID to</p> <p>9 know her age?</p> <p>10 A. To know her exact age, yes.</p> <p>11 Q. Okay.</p> <p>12 A. And we have her ID.</p> <p>13 Q. You know that for a fact?</p> <p>14 A. I know it for a fact because we wouldn't</p> <p>15 be able to sell this film if we didn't. We wouldn't be</p> <p>16 able to order the product.</p> <p>17 That was what I was explaining to you</p> <p>18 about the way that our AS/400 and our VLS are set up.</p> <p>19 Q. Do you know when this film -- when you</p> <p>20 process these documents?</p> <p>21 A. Do I know when I processed the documents</p> <p>22 for that film?</p> <p>23 Q. Yes, what year?</p> <p>24 A. No; but it seems to me like it's been</p> <p>25 pretty recent. I kind of -- the title is in my head</p>

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<p>1 Q. Is she -- she's wearing pigtails, 2 correct? 3 A. That's right. 4 Q. Is that something that people in their 5 30s usually do? 6 MS. BAUMGARDNER: Objection. 7 A. I don't know. I never wore pigtails, 8 ever. 9 Q. Okay. Now if we go to the description 10 of the film, it says, "The folks next door like it 11 sweaty &amp; slippery! Body beautiful Melanie gets 12 dripping wet while riding her hubby to multiple orgasm. 13 Young 18-plus, fresh faced gymnast Trinity and her BMOC 14 beau engage in positions even we've never seen, peaking 15 in both male and female ejaculation. Just as wild, a 16 youthful 'Santa Claus' penetrates his sexy Mrs. to 17 drenching climax under the Christmas tree." 18 A. "Sexy Mrs." 19 Q. Okay. Is that right; did I read that 20 accurately? 21 A. Yes. 22 Q. Okay. Do you know what "BMOC" means? 23 A. Big man on campus. 24 Q. Okay. And is that a term that you have 25 come to know through your work at Sinclair?</p>	<p>1 A. That's correct. 2 Q. Now, do you know the difference between 3 a 17-year-old and an 18-year-old? 4 MS. BAUMGARDNER: Objection. In 5 what way? 6 A. In what way? Yeah, I don't -- wouldn't 7 even know how to --- 8 Q. Can you tell a -- if I show you two 9 people, could you tell -- and one is 17 and one 18, 10 could you accurately tell which one is 18 and 17? 11 MS. BAUMGARDNER: Objection. 12 A. No. 13 Q. Do you know the, physically speaking, 14 the differences between a 17-year-old and an 15 18-year-old? 16 A. Are there physical differences? I mean 17 --- 18 Q. So you don't know if there are? 19 A. It just seems like an arbitrary sort of, 20 you know, I mean, I'm not even really sure what you're 21 asking me. It doesn't seem like a -- I guess I'm 22 trying to answer your question based on some sort of 23 logic. 24 Q. Yeah. 25 A. And I don't understand your logic.</p>
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<p>1 A. I think I've probably understood that 2 term since I watched a film on television growing up in 3 --- 4 Q. Okay. 5 A. --- you know, maybe like "My Three Sons" 6 or something. 7 Q. Okay. I mean, from the description, 8 it's pretty clear that the individuals are young and 9 youthful, correct? 10 MS. BAUMGARDNER: Objection. 11 A. From the description it sounds like it, 12 which as far as I know, that's legal. 13 Q. Okay. 14 A. Still. 15 Q. I'm sorry, I forget. Did you say that 16 you processed 2257 documents for this picture? 17 A. I would have to look at our AS/400 to 18 give you an accurate record. 19 Q. So you don't remember right now? 20 A. I don't remember this specific one. 21 Q. Okay. 22 A. But if we sell it, they've been 23 processed and certified. 24 Q. Now it says, "Young 18-plus" here in the 25 description, correct?</p>	<p>1 Q. Is -- I mean, do you know in there are 2 physical differences between 17-year-olds and 3 18-year-olds? 4 A. I don't know if there are. 5 Q. Okay. 6 A. There could be. 7 Q. Okay. So --- 8 A. Depending on the 17-year-old or the 9 18-year-old. 10 Q. Would you have difficulty in telling a 11 17-year-old from an 18-year-old? 12 MS. BAUMGARDNER: Objection. 13 A. Would I have difficulty? I don't know. 14 That would probably depend. 15 MR. BLADUELL: On the person. 16 Okay. 17 Why don't we take a break now and 18 we come back around 1:15? 19 MS. BAUMGARDNER: I'd like to -- 20 because Ms. Wilson has a pet that she needs to tend to, 21 I'd like to take a shorter lunch because it looks like 22 you still have a lot of ground to cover. 23 MR. BLADUELL: That's fine. Why 24 don't we say -- did I say, what, 1:15? 25 MS. BAUMGARDNER: You said 1:15.</p>

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<p>1 Can we make it like -- I have 12:25, so could we make 2 it 20?</p> <p>3 (Recess 12:25 p.m. - 12:52 p.m.)</p> <p>4 Q. (BY MR. BLADUELL) Ms. Wilson, I am 5 going to show you, again, Exhibit Number 2, which it 6 contains titles for which Sinclair Institute is the 7 primary producer, correct?</p> <p>8 A. That's correct.</p> <p>9 Q. And is it your -- do you have a practice 10 with respect to what age your performers have to be to 11 be included in these videos?</p> <p>12 A. We have identified that in our market 13 people have a range of interests in what they find 14 attractive and not attractive. We -- we do try to use 15 much older performers, sometimes, than might be in 16 videos because our market is often older adults.</p> <p>17 So we know that older adults also like 18 looking at people who are, you know, more fit than an 19 older adult is able to maintain. When I say "older 20 adult," I mean 60, 70, I mean. But we make films for 21 people throughout their lifetime for their sex lives.</p> <p>22 But we don't have any rules other than 23 what -- you know, we follow the rules that creators of 24 adult content have to follow, but we don't have a kind 25 of ageism in our company.</p>	<p>1 A. There are -- there are no -- there are 2 no rules. If an adult film can be certified, you know, 3 by its producers as being legal, then it can be 4 considered if it meets our standards of our company.</p> <p>5 Q. Okay. When you said before that your -- 6 you said before that your company had done some market 7 research ---</p> <p>8 MS. BAUMGARDNER: Objection.</p> <p>9 Q. --- to determine what your viewers like.</p> <p>10 A. Our -- many of our viewers write us 11 letters and tell us what they want to see. And also, 12 because we have an advisory board of professional 13 educators and therapists and researchers, they -- we 14 consult with them about what people need, you know, 15 what our market needs as far as -- you know, especially 16 our proprietary videos, we want to know what are the 17 issues that are concerning adults and sexuality that 18 they're going to see therapists for that the educators 19 are doing research on.</p> <p>20 And so, in that sense, you know, we are 21 very much in touch with ---</p> <p>22 Q. But you said -- I mean, you said just a 23 moment ago that your research indicated something 24 related to fitness of the models ---</p> <p>25 MS. BAUMGARDNER: Objection.</p>
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<p>1 Q. So is it accurate to say that one rule 2 with respect to ages is that all of the performers have 3 to be above 18?</p> <p>4 A. All of our performers are adults; yes.</p> <p>5 Q. And is there a rule that performers have 6 to be above 30?</p> <p>7 MS. BAUMGARDNER: Objection.</p> <p>8 A. There -- we really don't have any rules, 9 other than the rules that, you know, common decency and 10 the law would consider appropriate.</p> <p>11 Q. You don't -- you don't restrict the 12 individuals appearing in your films to people over 30?</p> <p>13 MS. BAUMGARDNER: Objection.</p> <p>14 A. We do not.</p> <p>15 Q. Is that the same case -- is it the same 16 for people, for individuals, appearing in the videos 17 for which you are a secondary producer?</p> <p>18 A. I'm sorry?</p> <p>19 Q. Is it the same practice for individuals 20 appearing in the pictures for which you are a secondary 21 producer?</p> <p>22 MS. BAUMGARDNER: Objection.</p> <p>23 A. In other words, do we have any rules 24 about how -- what age range the people that are ---</p> <p>25 Q. Yeah.</p>	<p>1 Q. --- of the people depicted.</p> <p>2 A. When I say research ---</p> <p>3 MS. BAUMGARDNER: Let me just -- I 4 just want to object.</p> <p>5 MR. BLADUELL: Sure. And you can 6 answer the question.</p> <p>7 MS. BAUMGARDNER: Yes. Go ahead.</p> <p>8 A. When I say "research," I'm using that 9 term very loosely.</p> <p>10 Q. Okay. So what do you mean by that?</p> <p>11 A. I mean what we know, what we understand.</p> <p>12 Q. How do you come to that understanding?</p> <p>13 A. The way that any company that sells any 14 product would come to the understanding, through people 15 in their own industry who they have conversations with, 16 people they may meet at a trade show or at a 17 professional conference.</p> <p>18 We also consult sexuality studies.</p> <p>19 Because we are in the adult sexual health and education 20 industry, we feel like it is our responsibility to our 21 market to provide them with topics, you know, to cover 22 topics that they are most interested in, and, you know, 23 sometimes it's just a matter of hearsay, just what you 24 hear, you know?</p> <p>25 And we have people write us letters</p>

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<p>1 study session with a blond jock into hot dorm room 2 fellatio &amp; intercourse. Irresistable cheerleader 3 Taylor manages to accommodate all of a hugely hung 4 basketball player in the men's locker room. Feeling 5 daring, blonde 4'11" Sasha deep throats her law student 6 beau in the library stacks. School is in session!" 7 A. Yes. 8 Q. What does that description tell you 9 about the ages of the performers in this? 10 A. Well, I know that coeds are college 11 students. We don't typically refer to people in high 12 school as coeds. 13 It says that these people are petite, 14 which is something that some people prefer, and that 15 none of them have had their breasts altered. 16 Q. Now, have you looked at the images on 17 the cover, are they -- is it reasonable to say that 18 these are people that are around the age of 18? 19 MS. BAUMGARDNER: Objection. 20 A. They are younger than I am, and I'm 50. 21 Q. Okay. So you cannot -- do they look 22 like they're 18? 23 MS. BAUMGARDNER: Objection. 24 A. I couldn't say. 25 Q. Could they be younger than 18?</p>	<p>1 A. Like totally out of context, right? 2 Q. Yes. 3 A. I would say there is no way that I could 4 tell you exactly how old they are. 5 Q. Okay. If we go below the image to the 6 left, to the right of the description, it says, 7 "Genre," correct? 8 A. Uh-huh (yes). 9 Q. Says, "Gonzo"? 10 A. Uh-huh (yes). 11 Q. What is "Gonzo"? 12 A. I'm not sure. It's a category -- it's a 13 porn movie category, but I'm not sure what it means. 14 Q. Okay. 15 A. I mean, I understand some of the more 16 obvious ones, like lesbian or heterosexual or -- but I 17 don't know what "Gonzo" means. 18 Q. And "Younger"? 19 A. "Younger, 18 + women." 20 Q. What does that mean? 21 A. It means that they are younger women 22 over 18. 23 Q. Younger than what? 24 A. Younger than older women. Over 18 -- 25 you know, way over 18, perhaps 30 years more than 18.</p>
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<p>1 MS. BAUMGARDNER: Objection. 2 A. No. 3 Q. Why do you say that they're --- 4 A. They just don't look younger than 18 to 5 me. 6 Q. Okay. 7 A. And I happen to know that they aren't 8 because we carry the film and we have all the IDs. 9 Q. But just looking at the picture, why can 10 you -- why do you say that they don't look younger than 11 18? What are the characteristics that make you say 12 that? 13 A. They are pretty fully developed young 14 women. I mean, they don't look like children. 15 Q. Okay. So looking at them, you would not 16 think that they could be under 18? 17 A. Did you say looking at them I could not 18 think that? 19 Q. Yes. 20 A. I think, you know, I don't -- I don't 21 really think that -- if what you're asking me is, would 22 I think they're under 18, no, because they are on the 23 front of a porn movie. 24 Q. Right. But just looking at the image 25 without knowing ---</p>	<p>1 Q. Okay. And "Pulse Pictures" --- 2 A. I mean, "18 +" means they're over 18, 3 that they're younger women, not dead women, but 4 younger. Do you know what I'm saying? I mean --- 5 Q. Well, does that category, "Younger, 18 6 plus," would it be accurate to apply it to people who 7 are 30 and are in movies? 8 A. I'm 50, and I consider a 30-year-old 9 woman younger. 10 Q. Okay. But from -- that's a different 11 kind of question. 12 My question is: when you're going to put 13 the label, "Younger, 18 plus," would it be accurate to 14 put that label for movies depicting people 30 and over? 15 MS. BAUMGARDNER: Objection. 16 A. I don't -- I really don't know. I don't 17 -- I don't -- I'm not in the mind of the people that do 18 this. 19 Q. Categorize? 20 A. That categorize our -- yeah. I just 21 know what it says and you're asking me what it means to 22 me. 23 Q. Uh-huh (yes). 24 A. And what it means to me is that they are 25 over 18 and they are younger, probably, than I am</p>

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1 A. --- Page 9, 11 ---  
 2 Q. Yeah. "Sinclair Institute shoulders all  
 3 these burdens despite the fact that the expression it  
 4 produces and distributes is important expression  
 5 depicting adults that could in no way be confused as  
 6 child pornography."  
 7 Did I read that accurately?  
 8 A. You did.  
 9 Q. And child pornography, what do you  
 10 understand child pornography to be?  
 11 A. Child pornography is -- the way that I  
 12 understand it is not adults, but children, who are  
 13 misused in visual depictions that could be construed as  
 14 sexual.  
 15 Q. When you say "adults," you mean what  
 16 age?  
 17 MS. BAUMGARDNER: Objection.  
 18 A. What the law says adults are.  
 19 Q. And do you know what that is?  
 20 A. Eighteen (18) years old.  
 21 Q. Okay. So child pornography is  
 22 everything under 18 years old, correct?  
 23 A. I don't know how the law defines child  
 24 pornography, but I know that our company is an adult  
 25 company and we only use adults.

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1 Q. Okay. Would depictions of sexual  
 2 intercourse between 17-year-olds, would that be child  
 3 pornography?  
 4 MS. BAUMGARDNER: Objection.  
 5 A. I thought it was like statutory rape or  
 6 something like that.  
 7 Q. Okay. So you don't know if it's  
 8 considered child pornography?  
 9 A. I don't know the definition of child  
 10 pornography.  
 11 Q. Okay. But when you wrote this, right,  
 12 because you wrote this correctly -- correct?  
 13 MS. BAUMGARDNER: With the  
 14 assistance of counsel.  
 15 Q. Okay. So, do you remember writing this?  
 16 A. I mean, I remember almost every single  
 17 bit of this.  
 18 Q. Okay. So ---  
 19 A. Some of it I don't remember to the  
 20 letter, but I know that these are -- that this is true  
 21 and that these words are my words and that these  
 22 calculations were calculations I made at my desk and  
 23 typed into a document and provided the lawyer with.  
 24 Q. That's fine.  
 25 So when you say "child pornography," is

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1 it accurate to say that you mean people below the age  
 2 of 18 or do you mean younger than that?  
 3 A. I don't know -- I mean, we know that  
 4 adults in our -- I mean, the law seems to be based on  
 5 what the general population considers to be normal  
 6 behavior. and it was decided that 18 was the age of  
 7 adult.  
 8 Q. Okay.  
 9 A. You know, and I, you know, I think that,  
 10 you know, if you've graduated from high school and  
 11 you've -- you know, you can leave home and you know  
 12 your parents no longer have any say in your life, if  
 13 you don't want it that way, you know, and so that's an  
 14 adult, and so, I would say that, you know -- when I  
 15 think child pornography, I do think little kids, but,  
 16 you know, and then I think adults are 18 and up even  
 17 though you can't drink until you're 21.  
 18 Q. Okay. But adults are 18 and up,  
 19 correct?  
 20 A. Yes.  
 21 Q. Adult?  
 22 And child would be under 18, correct?  
 23 A. I don't call 17-year-olds children.  
 24 Q. Okay. So you probably would not  
 25 consider ---

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1 A. They can have children themselves, so I  
 2 think ---  
 3 Q. So you would not ---  
 4 A. --- that it gets a little mushy. We  
 5 just follow the law in our business.  
 6 Q. Depictions of 17-year-olds, you,  
 7 personally, would not consider it as child  
 8 pornography?  
 9 MS. BAUMGARDNER: Objection.  
 10 A. I can't answer that. It just seems so  
 11 off the wall. I mean, it's -- it's so incredibly  
 12 hypothetical, I just don't know how to answer it.  
 13 Q. What if ---  
 14 A. I don't consider 17-year-olds children.  
 15 I don't know what the legal definition of child  
 16 pornography is.  
 17 MR. BLADUELL: Oops, sorry. For  
 18 the record, the lights are off again.  
 19 Q. I'm sorry?  
 20 A. I don't know what the definition of  
 21 child pornography, the legal definition of child  
 22 pornography is.  
 23 Q. I'm not asking for the legal, for your  
 24 -- for your definition. I mean, you said a moment ago,  
 25 child pornography, I think of kids. Does that mean

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<p>1 A. (Indicates yes.)</p> <p>2 Q. Yes?</p> <p>3 A. Yes.</p> <p>4 Q. And that server, does it contain other</p> <p>5 type of information other than 2257 records?</p> <p>6 A. I would have to look at what -- I would</p> <p>7 have to review the Answers in order to know ---</p> <p>8 Q. So you don't -- right now you don't</p> <p>9 know?</p> <p>10 A. It's technical knowledge and I just</p> <p>11 don't -- I don't have it at my ---</p> <p>12 Q. You don't -- you don't know?</p> <p>13 A. I don't know if it's separate or, you</p> <p>14 know, I know that there was a separate -- I know a</p> <p>15 separate program was commissioned and paid for so that</p> <p>16 the 2257 records could be kept on our -- in our VLS</p> <p>17 Program with our images.</p> <p>18 It may be a completely separate machine,</p> <p>19 I just don't know, and I wouldn't even know what it</p> <p>20 looked like.</p> <p>21 Q. Okay.</p> <p>22 A. Or where it is.</p> <p>23 Q. Okay. So that's -- if we see the server</p> <p>24 -- you mean, you don't know -- you don't know if it's</p> <p>25 in the Sinclair building?</p>	<p>1 Q. And do you know if it contains records</p> <p>2 for other PHE companies?</p> <p>3 A. We share all of the 2257 records, so the</p> <p>4 server exists -- every -- the server -- we have access</p> <p>5 to all of the records on the server. So, does that</p> <p>6 answer your ---</p> <p>7 Q. Yes. So the server would contain</p> <p>8 records from Adam &amp; Eve, correct?</p> <p>9 A. And if we needed them and Adam &amp; Eve</p> <p>10 hadn't put them on there, we'd have to put them on</p> <p>11 there.</p> <p>12 Q. And there's another company in the</p> <p>13 Sinclair Building, which is affiliated with PHE?</p> <p>14 A. Temptations Parties.</p> <p>15 Q. Temptations.</p> <p>16 Would those records be there as well?</p> <p>17 A. Yes, very little of their stuff would</p> <p>18 fall under this stuff because it's very tame.</p> <p>19 Q. Are there other companies that would</p> <p>20 have -- that are not Sinclair that would be -- that</p> <p>21 would have records in that server?</p> <p>22 A. That carry the same films that we do.</p> <p>23 If they ---</p> <p>24 Q. So what are these other ---</p> <p>25 A. We share the records.</p>
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<p>1 A. We have a server in our building.</p> <p>2 Q. Well, let's go to -- so you have a</p> <p>3 conflict?</p> <p>4 A. I don't think that it is because I think</p> <p>5 that's why it takes so long for us to upload the images</p> <p>6 is because it's not on site, it has to go through, you</p> <p>7 know, digital communication that isn't immediate. My</p> <p>8 best guess would be that it is not on site at our ---</p> <p>9 Q. When you say that it would be in PHE if</p> <p>10 it's not Sinclair, the building?</p> <p>11 A. That's my guess.</p> <p>12 Q. Okay. If we go to Page 4 here, the last</p> <p>13 paragraph on this Exhibit 16, Page 4, which is your</p> <p>14 Answer to Interrogatory Number 14, says, "In 2006, PHE,</p> <p>15 Inc. purchased a server for the purpose of maintaining</p> <p>16 records under 18 U.S.C. 2257 at the cost of</p> <p>17 \$105,524.39."</p> <p>18 A. Uh-huh (yes).</p> <p>19 Q. "In 2009 Sinclair Institute converted</p> <p>20 its paper records to digital format for the purpose of</p> <p>21 storing them on the server at a cost of \$12,000.00."</p> <p>22 A. Yes.</p> <p>23 Q. So the server was purchased by PHE,</p> <p>24 Inc., correct?</p> <p>25 A. Yes.</p>	<p>1 Q. So what are these other companies?</p> <p>2 MS. BAUMGARDNER: Objection.</p> <p>3 A. Adam Male.</p> <p>4 Q. Adam Male. Okay.</p> <p>5 A. That's the only one that I know of. And</p> <p>6 Temptations would have very little because -- so Adam &amp;</p> <p>7 Eve and ---</p> <p>8 Q. Temptations and Adam Male?</p> <p>9 A. Yes. Yes, and Adam &amp; Eve and Sinclair,</p> <p>10 we all have access to all of the records on the server</p> <p>11 except for that they don't have access to ours.</p> <p>12 Q. Okay. Do you know if Sinclair paid a</p> <p>13 portion of that one hundred thousand (100,000) for the</p> <p>14 server?</p> <p>15 A. I don't know what the -- I don't know</p> <p>16 what the financial arrangement is at all. I just know</p> <p>17 that if it weren't for that server, we couldn't keep</p> <p>18 these records.</p> <p>19 Q. So you don't know where the money came</p> <p>20 to purchase that server?</p> <p>21 A. No.</p> <p>22 Q. Now in ---</p> <p>23 A. PHE, Inc., I guess it says, purchased a</p> <p>24 server.</p> <p>25 Q. Okay. So the money came from PHE, Inc.?</p>

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<p>1 you would be secondary producers?</p> <p>2 A. No, I think it's about -- it's about the</p> <p>3 same for that, too.</p> <p>4 Q. Okay.</p> <p>5 A. I mean, there are -- most of the people</p> <p>6 are in their 20s and 30s.</p> <p>7 Q. Okay. Yeah. So 70 percent if we add</p> <p>8 this percentages would be in the 20s and 30s?</p> <p>9 A. Of what I see.</p> <p>10 Q. Okay.</p> <p>11 A. So that's like what we carry.</p> <p>12 Another company may carry a hundred</p> <p>13 percent of material where they make sure everybody is</p> <p>14 20 years old, I don't know, but this is just what I --</p> <p>15 it seems to be of all of the things available to us to</p> <p>16 sell, this is the representative, that's what I see.</p> <p>17 Q. Okay. Let me give you another document.</p> <p>18 Seventeen, Exhibit Number 17 I am marking. It is</p> <p>19 titled, "Townsend Sinclair Video Sales 2005 thru 2009."</p> <p>20 Providing a copy of the exhibit to Ms. Wilson and one</p> <p>21 to counsel.</p> <p>22 Ms. Wilson, have you seen this document</p> <p>23 before?</p> <p>24 (Defendant's Wilson Deposition</p> <p>25 Exhibit Number 17 Marked.)</p>	<p>1 Exhibit Number 17 when it says, "retail," do you know</p> <p>2 what that would mean?</p> <p>3 A. We have a retail division and a</p> <p>4 wholesale division, and the total number could be split</p> <p>5 up between those divisions.</p> <p>6 Q. And units, would that be individual</p> <p>7 number of videos?</p> <p>8 A. That -- I would think that that's what</p> <p>9 this means.</p> <p>10 Q. And those -- that would include the</p> <p>11 Sinclair videos for which you are the primary producer,</p> <p>12 such as the "Better Sex" videos, correct?</p> <p>13 A. That I would have no way of knowing from</p> <p>14 looking at this.</p> <p>15 Q. Okay.</p> <p>16 A. And, like I said, I don't really</p> <p>17 completely -- I don't remember -- I don't have full</p> <p>18 knowledge of my memory of this. I just remember some</p> <p>19 -- knowing that I would -- had I been asked this, I</p> <p>20 would not have been able to give this information, it</p> <p>21 would have had to come from accounting.</p> <p>22 Q. So you don't know if in these figures --</p> <p>23 you don't know if these figures include titles for</p> <p>24 which you are secondary producer of the covers?</p> <p>25 A. If you'll give me a second to look at it</p>
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<p>1 A. This must have come from our -- the</p> <p>2 information must have come from our accounting</p> <p>3 department, and I honestly cannot remember if I've ever</p> <p>4 seen it before.</p> <p>5 Q. Okay.</p> <p>6 A. I would not have had this information.</p> <p>7 We would have had to ask accounting for it because</p> <p>8 these are very specific numbers.</p> <p>9 Q. Do you remember counsel asking you for</p> <p>10 that information?</p> <p>11 A. Obviously I can't remember.</p> <p>12 Q. Okay. And you don't remember in</p> <p>13 relation to this litigation looking up this</p> <p>14 information?</p> <p>15 A. I would not have had access to it. We</p> <p>16 would have had to ask someone else for the -- we would</p> <p>17 have had to ask accounting.</p> <p>18 Q. Yes, I understand that, but do you</p> <p>19 remember doing that, asking accounting?</p> <p>20 A. I remember e-mails where Ginger and</p> <p>21 Patrick were cc'd that talked about financial numbers.</p> <p>22 I can't remember if it was sales or if it were costs.</p> <p>23 Q. Ginger Stallings?</p> <p>24 A. Stallings, uh-huh (yes).</p> <p>25 Q. Okay. And do you know what -- in this</p>	<p>1 and think about it, I might be able to give you a</p> <p>2 guess.</p> <p>3 Q. Okay.</p> <p>4 A. Okay. Because I just know about how</p> <p>5 much money we gross per year; and if this were wildly</p> <p>6 under that, then I would have to assume it was only our</p> <p>7 videos. Okay?</p> <p>8 Q. Okay.</p> <p>9 A. My guess is this is total and not just</p> <p>10 Sinclair Institute for proprietary video sales.</p> <p>11 Q. And that's -- and that's -- can explain</p> <p>12 your reasoning?</p> <p>13 A. I just know that we sell more than</p> <p>14 videos. I know we sell a lot of other companies'</p> <p>15 videos. We have a lot of other companies' videos in</p> <p>16 our catalog. The majority of the videos in our catalog</p> <p>17 are other companies' videos.</p> <p>18 Q. So if we look at the grand total, is</p> <p>19 that 52 million?</p> <p>20 A. That's what it -- that's what I'm</p> <p>21 reading on this paper.</p> <p>22 Q. From 2005 to 2009, you would ---</p> <p>23 A. In sales.</p> <p>24 Q. Yeah. It would not be -- it would not</p> <p>25 be accurate to assume that you just -- you made 52</p>

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Linda Dian Wilson - 4/3/13

<p style="text-align: right;">Page 278</p> <p>1 consulted the Council on the standards for Sinclair?  2 MS. BAUMGARDNER: Objection.  3 A. No.  4 Sorry, I didn't mean to interrupt you.  5 No.  6 Q. And your opinion that they were -- that  7 the standards were developed in consultation with this  8 Council is based on what someone told you about it?  9 MS. BAUMGARDNER: Objection.  10 A. It's based on my general understanding  11 after working with these people all of these years and  12 seeing their faces on the back of our videos and seeing  13 little spots of our videos where they are talking and  14 -- I'm sure they are re compensated for being in our  15 films.  16 Q. Are these standards written anywhere?  17 A. Probably. But I don't have to access  18 them, I just know that they are constantly referred to  19 in our reviews and discussed in front of me. But I  20 don't see them.  21 Q. Okay. Are they publicly available?  22 MS. BAUMGARDNER: Objection.  23 A. I don't know.  24 Q. Okay. But have you seen a paper  25 describing the standards?</p>	<p style="text-align: right;">Page 280</p> <p>1 have nothing.  2 MR. BLADUELL: Nothing? Okay.  3 (Whereupon, the deposition of  4 LINDA DIAN WILSON was concluded at 4:17 PM.)  5 ---  6  7  8  9  10  11  12  13  14  15  16  17  18  19  20  21  22  23  24  25</p>
<p style="text-align: right;">Page 279</p> <p>1 A. I've seen a paper that has our mission  2 statement on it.  3 Q. Okay. But not the standards that you're  4 ---  5 A. That they go by for the reviewing, no.  6 I just hear it referred to all the time.  7 Q. Okay. Have you met some of the  8 individuals here?  9 MS. BAUMGARDNER: Objection.  10 A. I have met Lori Buckley. I have met --  11 I talk to Eli Coleman. I have talked to some of these.  12 I've talked to -- I've met Beverly Whipple. They have  13 come by our building for a little event that we had.  14 Q. So, have your -- your discussions with  15 them have been informal ---  16 A. Yes.  17 Q. --- discussions, not necessarily about  18 the videos?  19 A. Correct.  20 MR. BLADUELL: Okay. I have no  21 further questions at this time.  22 I would like to thank you for your  23 answers and your patience.  24 THE WITNESS: Sure.  25 MS. BAUMGARDNER: Thank you. I</p>	<p style="text-align: right;">Page 281</p> <p>STATE OF NORTH CAROLINA  COUNTY OF WAKE  CERTIFICATE OF TRANSCRIPT  I, Margaret M. Powell, Certified  Verbatim Reporter-Notary Public, the officer before  whom the foregoing proceeding was taken, do hereby  certify that the attached transcript is a true, correct  and verbatim record of this proceeding.  I further certify that I am neither  counsel for, related to, nor employed by any of the  parties to the action in which this proceeding was  heard; and further, that I am not a relative or  employee of any attorney or counsel employed by the  parties thereto, and am not financially or otherwise  interested in the outcome of the action.  This the 15th day of April 2013.    /s/Margaret M. Powell, CVR  Margaret M. Powell, CVR    Notary Number 19970780127    Margaret M. Powell, CVR - (919) 779-0322</p>

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